

ORDINANCE NO. 2018 – 307

AN ORDINANCE OF THE CITY OF DEVERS PROHIBITING UNREASONABLE NOISE

WHEREAS, it is the intent of the City Council to prevent excessive noise, whenever possible, without substantially burdening the free exercise of speech and in every case within the constraints set by the Texas and United States Constitutions and applicable statutes, and this ordinance is intended to be interpreted as consistent with all such constraints.

Sec. 1 – Unreasonable Noise Prohibited

Causing unreasonable loud and disturbing noise in the city is hereby prohibited and shall constitute an offense. Noises of such character, intensity and duration as are reasonably calculated to be detrimental to the life or health of any ordinary reasonable person are hereby prohibited. It shall be unlawful for any person to make, assist in making, continue or allow or cause to be made or continued within the limits of the city, and 5,000 feet beyond the limits any noise nuisance. This ordinance is designed to regulate noise by various alternative means in order to allow the enforcement of noise regulations at times when and by persons for whom noise meters are not available. A noise may be in violation of this ordinance because it is disturbing to a reasonable person of ordinary sensibilities or because it exceeds the decibel level restrictions provided. If a noise violates more than one of these provisions, the violation will be enforced under whichever provision is most applicable to the situation as determined by the enforcement officer.

Sec. 2 - Definitions.

*A-weighted sound level* means 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.

*Daytime* means the times between 7:00 a.m. and 10:00 p.m.

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

*Emergency situation* means a situation in which one must take actions to prevent a traffic accident or to attempt to prevent a traffic accident.

*Emergency work* means 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.

*Motor vehicle* means any vehicle that is propelled or drawn on land by an engine or motor.

*Nighttime* means the hours from ten o'clock p.m. through seven o'clock a.m.

*Noise-sensitive area* includes, but is not limited to, a posted area where a school, church, hospital, nursing home, day care facility, court, public library, or similar facility (where persons gather and have a reasonable expectation of quiet, peace or solitude) is located.

*Person* means any individual, firm, business, entity, association, partnership, joint venture, or corporation.

*Public right-of-way* means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public, which is owned or controlled by any government entity.

*Public space* means 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* means 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* means 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.

*Sound equipment* means a loud speaker, public address system, amplification system, musical instrument, radio, CD player, or other sound producing device.

*Sound level* means 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.

### Sec. 3 - Restrictions on Decibel Levels.

(a) Maximum decibel levels. No person shall cause, suffer, allow, or permit any of the following acts which are declared to be noise nuisances. If a noise is made on property which falls under more than one of the categories enumerated hereafter, the lowest level shall apply. The making of noise which exceeds 85 decibels during the daytime or 63 decibels during the nighttime in all areas specifically including public rights-of-way.

(b) Method of noise measurement. Whenever portions of this ordinance 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. The measuring instruments shall be maintained in calibration and good working order. Calibration corrections shall be employed in meeting the response specifications prior to every noise sampling event. 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 a point beyond the real property line of the property from which the noise is being generated. Measurements of noise being generated on a public right of way or a public space shall be taken from a distance greater than or equal to 100 feet from the source of the noise.

#### Sec. 4. - Disturbance of reasonable person of ordinary sensibilities prohibited.

(a) Prohibited noises. In addition to the other noise restrictions provided in this ordinance, no person shall make, cause, suffer, allow, or permit unreasonably loud noises in such a manner, or with such volume, intensity, or duration, so as to disturb a reasonable person of ordinary sensibilities. A decibel level measurement shall not be required for the enforcement of this section.

(b) Included noises. This section is intended to apply to, but is not limited to, unreasonable noises in the form of: barking dogs; car alarms, vehicle exhaust, engine braking systems, radios, boom boxes, musical instruments, and other devices which reproduce or amplify sound; the cries of peddlers, hawkers and vendors; any noise during nighttime in a residential or noise-sensitive area which can be heard beyond the real property line of the premises from which the noise is originating.

(c) Noise from vehicles—Specifically. No person shall cause, suffer, allow or permit operation of a radio, tape or CD/DVD/MP3 player, or other electronic or mechanical sound-making device from a motor vehicle in a manner which emits sound audible to the human ear of a person with average and normal hearing, at a distance of 15 or more feet from the motor vehicle or which causes a person at that distance to be aware of a vibration accompanying the sound. The use of any automobile, motorcycle, or other vehicle so out of repair, loaded, or equipped in such a manner so as to create loud or unreasonable noise including grating, grinding, rattling or any other loud and unreasonable sound is hereby prohibited and declared unlawful.

#### Sec. 5. - Exemptions.

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

- (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 render it impractical to perform the work during daylight hours;
- (6) Athletic events. Athletic events in a stadium, ball park, 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 state or federal law;
- (9) Sound produced by permitted parades, approved special events and events sponsored and held by the city on public property for the general public, and pyrotechnic displays approved by the city;
- (10) An employee of a governmental entity engaged in the employee's official duty; or
- (11) A person operating a bell for a religious activity.


#### Section 6 - Penalties.

- (a) A person commits an offense if the person makes noise in violation of a provision of this ordinance.
- (b) An offense under this ordinance is a Class C misdemeanor, punishable by a fine of not less than \$100.00 nor more than \$2,000.00, or, if the person has previously been convicted of a violation under this chapter, by a fine of not less than \$200.00 nor more than \$2,000.00.
- (c) Each occurrence of a violation, or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.

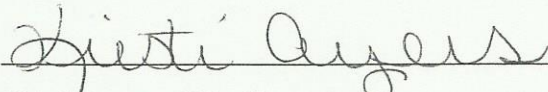
(d) A violation of this ordinance is a nuisance. The prosecution of an offense under this ordinance does not limit the city's right to abate the nuisance, including the use of injunctive or other civil relief.

(e) No provision of this ordinance shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this ordinance or from other law.

Passed and approved by the City Council of Devers, Texas on this 8<sup>th</sup> day of May, 2018.

  
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Steve Horelica, Mayor

Attest:

  
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Kristi Ayers, City Secretary