

This is a draft of a proposed Noise Ordinance for Heath for your review. The City currently does not have a Noise Ordinance, and this draft is only a starting point for Heath that is based upon models adopted by other cities. All of the terms, including the hours stated for a commercial business to be able to play sound/live music, will be refined during a process that begins with getting citizen input at a Community Forum on Thursday, June 17, 6-7 p.m. at City Hall.

CITY OF HEATH
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEATH, TEXAS, AMENDING TITLE IX “GENERAL REGULATIONS” OF THE CITY OF HEATH CODE OF ORDINANCES BY ADOPTION OF CHAPTER 97 “NOISE”, REGULATING THE NOISE LEVEL WITHIN THE CITY OF HEATH; DECLARING A NUISANCE; PROVIDING A PENALTY OF UP TO \$2,000 FOR EACH VIOLATION; PROVIDING SAVINGS, REPEALER AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Heath, Texas (the “City”) is a home rule municipality operating pursuant to the laws of the State of Texas and its Charter, by and through its duly elected City Council (“Council”) members; and

WHEREAS, the City has previously taken action to establish a Code of Ordinances (the “Code”) and is authorized by law to revise and amend existing ordinances, not inconsistent with state law; and

WHEREAS, it is the intent of the City to protect and promote the health, safety and welfare of the public at large; and

WHEREAS, the Council deems it necessary, expedient, and in the best interest of the City to adopt the below revisions to its Code.

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

Section 1. Incorporation of Premises. All of the above premises are found and determined to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. Code Amended. The Council declares Title IX of the Code hereby amended to adopt Chapter 97 as set forth below.

CHAPTER 97: NOISE

- 97.01 Policy and intent of article.
- 97.02 Definitions.
- 97.03 Noise as public nuisance.
- 97.04 Affirmative defenses.
- 97.05 Offense and Notice.
- 97.06 Enforcement.
- 97.07 Penalties.

§ 97.01 POLICY AND INTENT OF ARTICLE.

It shall be the policy of the city 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.

§ 97.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AUTHORIZED EVENT. An event is deemed to be authorized if the event received an official permit for the event through the city, and events approved by the Rockwall Independent School District for campuses within the City of Heath.

NOISE. A loud or unpleasant sound that someone or something creates.

NOISE NUISANCE. Any unreasonably loud, disturbing, unwanted noise which causes material distress, discomfort or injury to persons of ordinary sensibilities in the immediate vicinity, or any noise of such character, intensity, and continued duration which may jeopardize the health, comfort, convenience, welfare, peace, or safety of the citizens, degrade their quality of life, and/or which substantially interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities is hereby declared to be a noise nuisance.

PERSON. Any individual, business, firm, association, partnership, corporation, or any other entity, public or private.

USE DISTRICT. Those zoning districts established by the city zoning ordinance.

§ 97.03 NOISE AS PUBLIC NUISANCE.

The following acts may jeopardize the health, comfort, convenience, welfare, peace, or safety of the citizens, degrade their quality of life, and/or substantially interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities and, therefore, such acts are declared to be a public nuisance. The following enumerations shall not be deemed to be exclusive.

- (A) *Unreasonable noise prohibited.* A person making or knowingly permitting or allowing to be made any unreasonably loud, disturbing, unnecessary noise which causes material distress, discomfort or injury to neighboring persons of ordinary sensibilities.
- (B) *Unreasonable noise prohibited in or near a residential use district.* A person making or allowing for any noise of such character, intensity, and continued duration which substantially interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities in a residential use district.
- (C) *Vehicle horns, signaling devices, and similar devices.* The sounding of any horn, signaling device, or other similar device, on any automobile, motorcycle, or other vehicle on any right-of-way or in any public space of the city, for more than ten (10) consecutive seconds unless the sounding of any horn, signaling device, or other similar device is a danger warning.
- (D) *Nonemergency signaling devices.* Sounding or permitting the sounding of any amplified signal from any bell, chime, siren, whistle, or similar device intended primarily for nonemergency purposes from any place for more than ten (10) consecutive seconds in any hourly period. It is an affirmative defense to this subsection that the amplified signal is the reasonable sounding of such devices by houses of religious worship, ice cream trucks, or by the city for traffic control.

- (E) *Radios, televisions, boom boxes, phonographs, stereos, musical instruments, and similar devices.* The use or operation of a radio, television, boom box, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of:
1. Neighbors or passersby of ordinary sensibilities in a commercial use district or public space.
 2. Neighbors of ordinary sensibilities in a residential use district.
- (F) *Radios, televisions, boom boxes, phonographs, stereos, musical instruments, and similar devices, audible sounds.* The use or operation of a radio, television, boom box, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which is plainly audible at a distance of fifty (50) feet from the property line of a premises in a commercial use district or public space.
- (G) *Loudspeakers, amplifiers, public address systems, and similar devices.* Except as otherwise provided in this ordinance, the use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound:
1. Between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, and 10:00 p.m. and 10:00 a.m. on weekends and holidays in the following areas:
 - i. Within or adjacent to a residential use district; or
 - ii. Within public space if the sound is plainly audible across the real property line of the public space from which the sound emanates and is unreasonably loud and raucous to a person of ordinary sensibilities.
 2. From moving vehicles for the purpose of advertising any show, sale, display of merchandise, or any other purpose.
- (H) *Animals and birds.* Unreasonably loud, disturbing, and unnecessary noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal or bird if the person owns, controls, harbors, or otherwise cares for the animal or bird unless the sound is made by animals or birds in animal shelters, kennels, veterinary hospitals, pet shops, or pet kennels, licensed under and in compliance with licensing and permitting provisions of the city.
- (I) *Lawn mowers, blowers and similar devices.* Operation of any noisy and disturbing lawn mower, blower, or similar device, in a residential use district, between the hours of 10:00 p.m. and 7:00 a.m., including:
1. Grating, grinding, or rattling noise caused by the use of any internal combustion engine that is out of repair or poorly or improperly loaded.
 2. Discharge into the open air of the exhaust of any stationary steam engine, stationary internal combustion engine, or motorboat engine, except through a muffler or other device that will effectively and efficiently prevent loud and disturbing noise or vibration.

3. Discharge into the open air of the exhaust from any motor vehicle, except through a muffler or other device that will effectively and efficiently prevent loud and disturbing noise or vibration.
- (J) *Vibration.* The use or cause of the use of any device that creates any ground vibration which is perceptible without instruments at any point beyond the property boundary of the source of the vibration.
- (K) *Commercial establishment's production of live music or sound.* A business in a commercial use district shall only be allowed to have an outdoor band, music or any type of amplified sound according to the following schedule:
- Sunday: Between 10:00 a.m. to 11:00 p.m.
- Monday: Between 10:00 a.m. to 11:00 p.m.
- Tuesday: Between 10:00 a.m. to 11:00 p.m.
- Wednesday: Between 10:00 a.m. to 11:00 p.m.
- Thursday: Between 10:00 a.m. to 2:00 a.m. the following Friday morning
- Friday: Between 10:00 a.m. to 2:00 a.m. the following Saturday morning
- Saturday: Between 10:00 a.m. to 2:00 a.m. the following Sunday morning
- (L) *Motor vehicle idling.* The operation of any engine of any motor vehicle with a manufacturer's gross weight specification in excess of 10,000 pounds within a residential use district or 300 feet of a residential structure for a period in excess of 15 minutes, unless the vehicle is located in an enclosed structure.

§ 97.04 AFFIRMATIVE DEFENSES.

It shall be an affirmative defense that the noise was as a result of the following activities:

- (A) A person at an authorized event.
- (B) A person operating a bell for a religious activity.
- (C) A person operating an emergency vehicle.
- (D) A person operating an audible warning device on a vehicle or train as required by state law.
- (E) A siren or other warning device emitting a noise for the purposes of warning the population of dangerous weather or other events. A noise from such a warning device is exempt regardless of whether the sound is made for the purposes of warning or testing.
- (F) A person operating equipment or making deliveries for site development or site preparation between 6:00 a.m. and 7:00 p.m. on Monday through Friday, and 8:00 a.m. and 6:00 p.m. on

Saturday and Sunday or as such deliveries may be allowed in a planned development district or by other city ordinance.

- (G) The operation of properly maintained air conditioning, ventilating, or heating devices, if within sound levels specified by the manufacturer or similar to sound levels produced by equivalent, adjacent devices.
- (H) A public performance, gathering, or parade for which a permit has been obtained from the city, so long as the event is within the requirements of the permit.
- (I) Noise made to signal for emergency help.

§ 97.05 OFFENSE AND NOTICE.

- (A) Except as provided in subpart (B)(3), a person commits an offense if the person violates any part of this chapter after receiving notice from a city official that such conduct is prohibited and having a reasonable opportunity to correct the violating conduct.
- (B) Notice.
 1. *Notice good for a year.* Once notice is received, the violator will not be entitled to another notice of warning for a noise violation at any time in the next year.
 2. *Notice requirement not applicable to other offenses occurring contemporaneously.* The requirement for notice does not apply to any other violation found while investigating a noise complaint.
 3. *Notice requirement not applicable to vehicles.* Notice is not required for noise violations emanating from vehicles.

§ 97.06 ENFORCEMENT.

A notice of violation may be issued by a law enforcement officer, code enforcement officer, or fire marshal employed by the city.

§ 97.07 PENALTIES.

A person who violates any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be fined a sum of up to \$2,000 for each offense, in accordance with the general provisions of this code of ordinances. Each day or portion of a day during which such violation occurs shall be deemed a separate offense.

Section 3. Savings and Repealer. Any ordinance in effect prior to adoption of this Ordinance, shall be deemed repealed to the extent that such ordinance is in conflict with the ordinance adopted hereby, and to the extent not in conflict herewith, such ordinance shall continue in full force and effect; provided, such repeal shall not affect any offense committed or penalty incurred or any right established prior to the effective date of this Ordinance.

Section 4. Severability. It is hereby declared to be the intention of the Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause,

sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

Section 5. Effective Date of Ordinance. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof as the law and Charter of the city in such cases provides.

PASSED AND APPROVED by the City Council of the City of Heath, Texas on this ___ day of May 2021.

APPROVED:

Kelson Elam, Mayor

ATTEST:

Norma Duncan, City Secretary