

**CITY OF HEATH
ORDINANCE NO. 210810A**

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 chapter.
- 97.02 Definitions.
- 97.03 Noise as public nuisance.
- 97.04 Exemptions.
- 97.05 Affirmative defenses.
- 97.06 Offense and Notice.
- 97.07 Enforcement.
- 97.08 Penalties.

§ 97.01 POLICY AND INTENT OF CHAPTER.

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 nuisances and public nuisances 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.

ANIMALS. Any live, vertebrate creature, domestic or wild.

AUTHORIZED EVENT. An event that received an official permit for the event through the city, is sponsored by the city, is held by the city, or is an event approved by the Rockwall Independent School District for campuses within the City of Heath.

EMERGENCY. Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss that demands immediate action.

EMERGENCY WORK. Any work performed for the purpose of: (i) preventing or alleviating the physical trauma or property damage threatened or caused by an emergency; (ii) restoring property to a safe condition following a fire, accident, or natural disaster; (iii) protecting persons or property from exposure to danger; or (iv) restoring public utilities.

LIVESTOCK; LARGE. Animals generally exceeding 500 pounds in weight to include mules, donkeys, horses, mares, colts, bulls, cows, calves, llamas, buffalos, alpacas and swine.

LIVESTOCK; SMALL. Animals generally less than 500 pounds in weight to include sheep, goats, emu, ostrich, rheas, miniature horses and potbellied pigs.

NOISE NUISANCE. Any unreasonably loud, disturbing sound of such character, intensity or continued duration which: (i) causes material distress, discomfort or injury to a person of ordinary sensibilities in the immediate vicinity; (ii) jeopardizes the welfare, peace, or health of a person of ordinary sensibilities; or (iii) substantially interferes with the comfortable enjoyment by a person of ordinary sensibilities of a residential use district.

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

PUBLIC RIGHT-OF-WAY. Any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public, which is owned or controlled by a government entity.

PUBLIC SPACE. Any real property or structure 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.

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

§ 97.03 NOISE AS PUBLIC NUISANCE.

The following acts and sounds are declared to be a public nuisance and, therefore, a violation of this chapter. The following enumerations shall not be deemed an exclusive list.

- (A) *Prohibited noises.* In addition to the other noise restrictions provided in this chapter, no person shall make, cause, suffer, allow, or permit a noise nuisance.

- (B) *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 for more than ten (10) consecutive seconds.
- (C) *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 unreasonably disturbs the peace, quiet, and comfort of: (i) a passerby of ordinary sensibilities in a commercial use district, public right-of-way, or public space; or (ii) a person of ordinary sensibilities in a residential use district.
- (D) *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 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: (i) a passerby of ordinary sensibilities in a commercial use district, public right-of-way, or public space; or (ii) a person of ordinary sensibilities in a residential use district.
- (E) *Animals, birds, and livestock.* Unreasonably loud, disturbing, frequent or long and continued sound emitted by an animal, bird or livestock for which a person is responsible unless the sound is made by animals, birds or livestock in animal shelters, kennels, veterinary hospitals, pet shops, or pet kennels, licensed under and in compliance with licensing and permitting provisions of the city, or such noises made by livestock on property authorized to allow keeping of livestock and does so in accordance with all applicable city ordinances, federal and state law. A person is responsible for an animal, bird, or livestock if the person owns, controls, harbors, or otherwise cares for the animal, bird, or livestock.
- (F) *Lawn mowers, blowers, and similar devices.* Operation of any loud 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.
- (G) *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.
- (H) *Commercial establishment's production of live music or sound.* Unreasonably loud and disturbing music or sound from the premises of any commercial establishment, including any outdoor area which is part or under the control of the establishment, which is plainly audible to any person other than those who are voluntarily listening to the music or sound at the commercial establishment, and which disturbs the peace, quiet, and comfort of: (i) a passerby of ordinary sensibilities in a public space, public right-of-way; or (ii) a person of ordinary sensibilities in a residential use district.
- (I) *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 fifteen (15) minutes, unless the vehicle is located in an enclosed structure.

§ 97.04 EXEMPTIONS.

The following acts and sounds are exempt from the prohibitions of this chapter:

- (A) A sound produced as part of a religious observance or service.
- (B) 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.
- (C) Sirens, whistles, bells, or other alarm system lawfully used by an emergency vehicle in case of fire, collision, civil defense, police activity or imminent danger.
- (D) Noise made by a horn or other warning device, such as a train, when required by state or federal law.
- (E) Noise made in the performance of emergency work.
- (F) An employee of the city or other governmental agency when engaged in the employee's official duty.
- (G) Reasonable activities conducted on public playgrounds and 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 and school entertainment events.

§ 97.05 AFFIRMATIVE DEFENSES.

The following acts and sounds shall serve as an affirmative defense to any offense established in this chapter:

- (A) Noise produced at an authorized event, when reasonably related to such event and the requirements of the applicable permit, if any.
- (B) 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, 8:00 a.m. and 6:00 p.m. on Saturday or Sunday, or as such deliveries may be allowed in a planned development district or by other city ordinance.
- (C) 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.
- (D) Noise made to signal for emergency help.

§ 97.06 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.

§ 97.07 ENFORCEMENT.

A notice of violation may be issued by a law enforcement officer, code enforcement officer, or fire marshal, employed by the city, whether or not there has been a complaint filed.

§ 97.08 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 10 day of AUGUST 2021.

APPROVED:



Kelson Elam, Mayor

ATTEST:



Norma Duncan, City Secretary

