

ORDINANCE NO. 3741-02-2010

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, AMENDING THE LEWISVILLE CITY CODE, CHAPTER 9, NUISANCES, ARTICLE I., BY ADDING SEVERAL DEFINITIONS; CLARIFYING PROHIBITED NOISES; AND ALLOWING FOR VARIANCES TO THE NOISE RESTRICTIONS; PROVIDING FOR A REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Lewisville has determined that for the health, welfare and safety of its citizens certain amendments to the Lewisville City Code, Chapter 9, Nuisances, Article I., are necessary;

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

SECTION 1. Chapter 9, Article I., Section 9.1 is hereby amended by deleting the current language of the following definitions in their entirety and in their place inserting the following new language:

Daytime shall mean from 7:00 a.m. to 10:00 p.m. on Monday through Thursday; from 7:00 a.m. to 11:00 p.m. on Friday; from 9:00 a.m. to 11:00 p.m. on Saturday; and from 9:00 a.m. to 10:00 p.m. on Sunday.

Nighttime shall mean from 10:00 p.m. to 7:00 a.m. on Monday through Thursday; from 11:00 p.m. on Friday to 9:00 a.m. on Saturday; from 11:00 p.m. on Saturday to 9:00 a.m. on Sunday; and from 10:00 p.m. on Sunday to 7:00 a.m. on Monday.

Outdoor music festival. Any form of musical entertainment provided by live performances if:

- (1) More than 200 persons are in attendance at any one performance; or
- (2) The event requires paid admission and any of the performers or performances are not within a permanent, enclosed structure; or
- (3) The event requires paid admission and any of the performances involve the use of amplified sound.

SECTION 2. Chapter 9, Article I., Section 9-1 is hereby amended by adding the following new definition:

Clearly audible shall mean sound that can be heard without the assistance of any device.

SECTION 3. Chapter 9, Article I., Section 9.5 is hereby amended by deleting the current language in its entirety and in its place inserting the following new language:

Sec. 9-5. Noise prohibited.

(a) It is unlawful for a person to allow, make or cause to be made any excessive or unnecessary noise of a volume, intensity, repetitiveness or duration that is clearly audible and that is offensive to a reasonable and prudent adult person within 100 feet of the noise source, or any area within the property line of the parcel or lot upon which the source of noise is emanating, whichever is the greater distance from the noise source. Such noise shall be a violation of this article.

(b) The following acts are declared to create excessive or unnecessary noise in violation of this article, but such enumeration shall not be deemed exclusive:

(1) *Radios, televisions, musical instruments, loud speaking amplifiers and similar devices.*

a. The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by the creation of noises to any performance, show, sale or display of merchandise as to attract customers to any place of business.

b. The use of mechanical loudspeakers or amplifiers on trucks or other moving vehicles for the purpose of advertising any show, sale or display of merchandise, or any other purpose.

c. For any vehicle to be equipped with, or for any person to use upon any vehicle, any bell, siren, compression horn or exhaust whistle, except that vehicles operated in the performance of duty by law enforcement officers, fire departments and ambulances may attach and use a bell, siren, compression horn or exhaust whistle.

d. To operate or permit to be operated any loudspeaker or sound-amplifying equipment in a fixed or movable position mounted on or in any vehicle in or upon any street, alley, sidewalk, park, or other public property so that the sound is clearly audible for 50 feet from its source.

e. The playing of any loudspeaker, sound amplifying equipment, television, radio, or any musical instrument in such manner or with such volume, so as to be clearly audible to a person in his residence; and

- i. During the daytime or nighttime, in a single-family residence, measures more than 65 dBA on the A-weighting scale on an approved sound-level meter.
 - ii. During the daytime, in a multi-family dwelling, measures more than 65 dBA on the A-weighting scale on an approved sound-level meter in any adjacent unit; or
 - iii. During the nighttime, in a multi-family dwelling, be clearly audible within any unit that is not the source of the sound;
 - f. Operate or cause to be operated any mechanical or electrical device, machine, apparatus, or instrument that will intensify, amplify or reproduce the human voice or any other sound whereby the sound is clearly audible for 50 feet onto public property.
 - g. The operation of any radio, stereo receiver or amplifier, sound amplifying equipment, musical instrument, television set, machine, sound speakers or similar device in such a manner as to be clearly audible at the distance of 50 feet, or in such a manner that the vibration accompanying the sound from the device can be plainly felt at the distance of 50 feet from its source.
- (2) *Power equipment.* Operate or permit to be operated any power or pneumatic equipment outdoors in a residential zone or within 150 feet of the boundary line of a residence during the nighttime. Motorized electric or fuel powered equipment including but not limited to tractors, lawnmowers and other similar devices or equipment shall be considered power equipment.
- (3) *Powered model mechanical devices.* Flying or operating of model aircraft or other model vehicles powered by internal combustion engines, whether tethered or not, or the flying or operating of model rocket vehicles or similar noise-producing devices, in a residential area during the nighttime.
- (4) *Construction work.* The erection, excavation, demolition, alteration, or repair work on any building at anytime other than between the hours of 6:00 a.m. and 8:30 p.m. Monday through Friday from June 1 to September 30; between 7:00 a.m. and 8:30 p.m. Monday through Friday from October 1 to May 31; between 8:00 a.m. and 8:30 p.m. on Saturday; and between 10:00 a.m. and 8:30 p.m. on Sunday; provided, however, that the city building official may issue special permits for such work at other hours in case of urgent necessity and in the interest of public safety and convenience.
- (5) *Collection of garbage, waste, refuse or recycled materials.* The collection of garbage, waste, refuse or recycled materials between the hours of 7:00 p.m. and 7:00 a.m. in any area zoned residential or within 500 feet of an area zoned residential.
- (6) *Vibration.* Using or causing the use of any device that creates any ground vibration which is perceptible without instruments at any point on or beyond the property boundary of the source if on private property or at 50 feet from the source if on public property; or the creation of vibration or bass

reverberations at any time if it is perceptible inside a complaining person's residence, through the sense of touch or through visual observation of moving objects, or through the sense of hearing.

(7) *Outdoor music festival.* At any outdoor music festival, it shall be unlawful for any person or group sponsoring the event to make, cause, allow, or permit any noise that exceeds 70 dBA on an approved sound-level meter when measured at the established perimeter of the event.

SECTION 4. Chapter 9, Article I., Section 9-6 is hereby amended by deleting the current language in its entirety and in its place inserting the following new language:

Sec. 9-6. Exemptions.

The following sources of potential noise violations shall be exempt from the regulations of this article:

- (a) Noise created by power equipment being operated by city employees or utility company employees, during normal performance of duties;
- (b) Sound caused by emergency or public service work, including police, fire and public utility operations, when the sound is associated with the performance of lawful duties to protect the health, safety or welfare of the community;
- (c) Horns or other warning devices required by law;
- (d) Bells and music boxes used on vehicles of ice cream vendors and similar vendors to attract children as patrons; provided however, that when used, the bells and music boxes are not operated so loudly as to be offensive to a reasonable and prudent adult person of ordinary sensibilities;
- (e) City-operated or city-sponsored events; or
- (f) Athletic events conducted by the Lewisville Independent School District.

SECTION 5. Chapter 9, Article I., Section 9-7 is hereby added with the following new language:

Sec. 9-7. Variances.

The city council may authorize a variance to any noise restriction set forth in this article.

SECTION 6. REPEALER. Every ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

SECTION 7. SEVERABILITY. If any section, sentence, clause, or phrase of this ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this ordinance, but they shall remain in effect.

SECTION 8. PENALTY. Any person, firm or corporation who violates any provisions of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof in the Municipal Court, shall be subject to a fine of not more than \$500.00 for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

SECTION 9. EFFECTIVE DATE. This Ordinance shall take effect and be in full force and effect from and after the date of its passage and publication as required by law.

SECTION 10. EMERGENCY. It being for the public welfare that this Ordinance be passed creates an emergency and public necessity and the rule requiring this Ordinance be read on three separate occasions be, and the same is hereby, waived and this Ordinance shall be in full force and effect from and after its passage and approval and publication, as the law in such cases provides.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF 5 TO 0 , ON THIS THE 1ST DAY OF FEBRUARY, 2010.

APPROVED:

Dean Ueckert, MAYOR

ATTEST:

Julie Heinze, CITY SECRETARY

APPROVED AS TO FORM:

Ronald J. Neiman, CITY ATTORNEY