

ORDINANCE NO. 758

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HOWE, TEXAS, ESTABLISHING NOISE CONTROL AND CONSTRUCTION HOURS WITHIN THE CITY OF HOWE, TEXAS; PROVIDING FOR THE REGULATION OF NOISE DISTURBANCE WHICH IS DETRIMENTAL TO LIFE OR HEALTH, OR WHICH INTERFERES WITH THE ENJOYMENT OF PROPERTY OR THE PUBLIC PEACE AND COMFORT; DEFINING THOSE NOISES WHICH ARE UNLAWFUL; PROVIDING FOR EXEMPTIONS, VARIANCES AND APPEALS; PROVIDING FOR A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING FOR OTHER ENFORCEMENT PROCEEDINGS; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; PROVIDING FOR AN EFFECTIVE DATE AS THE DATE OF PUBLICATION AS REQUIRED BY LAW; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Howe, Texas, has determined that noise, noise pollution and noise protection are important issues and concerns affecting the City; and,

WHEREAS, it is hereby declared that the City of Howe, Texas, seeks to minimize exposure to the harm of excessive noise and to protect, promote and preserve the public health, comfort, convenience, safety and welfare; and,

WHEREAS, the prevention of unreasonable noise is critical to the protection of the public and in the interest of the health, safety and welfare of the citizens; and,

WHEREAS, it is the express intent of the City Council of the City of Howe, Texas, to control the level of noise in a manner which promotes commerce, protects the sleep and repose of citizens and preserves the quality of life and the environment; and,

WHEREAS, the City Council of the City of Howe, Texas, finds that noise pollution is a serious concern to all inhabitants of the community, and that it is in the best interest of the citizens of Howe to adopt this Ordinance; and,

WHEREAS, properly regulating construction work, which is a major source of noise, will provide noise protection and improve the overall quality of life for the citizens of Howe; and

WHEREAS, the provisions herein are necessary to promote and protect the health, safety, and welfare of the public by creating an environment that is protective of the

city's environment, enjoyable use of property and provides an enhanced quality of life for the citizens of the City of Howe.

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

SECTION 1. Adoption of Findings of Fact.

The findings and recitations set out in this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

SECTION 2. Purpose.

The purpose of this Ordinance is to make it unlawful for any person or entity to make, cause to be made, or allow any unreasonably loud and disturbing noise of such a character, intensity and duration as to be detrimental or offensive to the ordinary sensibilities of the citizens of Howe, Texas, and/or which renders the enjoyment of life, health or property uncomfortable or interferes with the public peace and comfort. This Ordinance is in addition to any federal or state statute or regulation that regulates noise, including but not limited to Texas Penal Code Chapter 42.

SECTION 3. Construction Hours and Compliance by Contractors and Proposed Developments.

All contractors and subcontractors are required to comply with the provisions and intent of this Ordinance in their operations. Further, allowable construction and demolition hours in all zoning districts shall only be as follows:

Monday through Friday	7:00 a.m. to 7:00 p.m.
Saturday	8:00 a.m. to 7:00 p.m.
Sunday	12:00 p.m. to 7:00 p.m.

SECTION 4: Definitions.

A. Construction- Any site preparation, assembly, building, erection, excavation, framing, roofing, trenching, substantial repair, alteration, or similar action (excluding demolition) of public or private right-of-way surfaces, structures, utilities or similar property.

- B. Demolition- Any dismantling, intentional destruction or removal of public or private right-of-way surfaces, structures, utilities or similar property.
- C. Device- Any mechanism which is intended to produce, or which actually produces, noise when operated or handled.
- D. Emergency Vehicle- A motor vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.
- E. Motor Vehicle - Any vehicle propelled by mechanical power, such as, but not limited to, any passenger car, truck, truck-trailer, semi-trailer, camper, motorcycle, mini-bike, go-cart, dune buggy or racing vehicle.
- F. Noise Disturbance - Any sound which annoys or disturbs, or which causes or tends to cause an adverse psychological or physiological effect upon, the sensibilities of a reasonable, prudent, adult person; any unreasonably loud or disturbing noise which is offensive to the sensibilities of a reasonable, prudent, adult person; and any unreasonably loud or disturbing noise which renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort.
- G. Noise Disturbance *Per Se* - Not requiring extraneous evidence or support to establish the existence of a noise disturbance.
- H. Person - Any individual, firm, association, partnership, corporation or any other entity, public or private.
- I. Non-Residential District - Any district not classified by Howe's zoning ordinance as containing residential homes, apartments or condominiums.
- J. Power Equipment - Any motorized electric or fuel powered equipment, including but not limited to, tractors, lawnmowers and other similar device or equipment.
- K. Powered Model Vehicle - Any self-propelled airborne, waterborne, or land borne plane, vessel, or vehicle, which is not designed to carry persons, including, but not limited to, any model airplane, boat, car or rocket.
- L. Property Boundary - An imaginary line exterior to any enclosed structure, at the ground surface and its vertical extension, which separates the real property owned by one person from that owned by another person.

M. Quiet Zone - Property on which a school, hospital, clinic, library or other noise disturbance sensitive facility is operated.

N. Residential District - Any district classified by Howe's zoning ordinance as containing residential homes, apartments or condominiums.

All terminology used in this Ordinance and not specifically defined above, shall retain its meaning in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body and/or the latest volume of Webster's Collegiate Dictionary.

SECTION 5: Specific Noise Disturbance Prohibited.

A. No person shall allow, make or cause to be made any unreasonably loud or disturbing noise in Howe which is offensive to the sensibilities of a reasonable, prudent adult person, renders the enjoyment of life or property uncomfortable, interferes with public peace and comfort, or causes a noise disturbance as defined herein.

B. The following list includes, but is not limited to, activities which can create unreasonably loud or disturbing noises in violation of this Ordinance, including activities which are noise disturbances *per se*, unless an exemption exists pursuant to Section 6 or a permit of variance was first obtained as provided in Section 7:

1. Animals - Owning, keeping, possessing, or harboring any animal or animals which, by frequent or habitual noise making, unreasonably disturbs or interferes with the peace, comfort or repose of the citizens of Howe, or causes a noise disturbance as defined herein. The provisions of this Ordinance shall apply to all private or public facilities including any animal shelter or commercial kennel, which hold or treat animals.

2. Radios, television sets, musical instruments, loud speaking amplifiers and similar devices.

a. The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device for the producing or reproducing of sound within a residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance *per se* if conducted between the hours of 10:00 p.m. and 7:00 a.m.

b. The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device for the producing or reproducing of sound within a non-residential area in such a manner as to cause a noise disturbance.

c. The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device that produces or reproduces sound for the purpose of attracting attention to any cause or demonstration, or to any performance, show, sale or display of merchandise so as to attract attention to such cause, demonstration or premises when such use is done in a manner which causes a noise disturbance.

d. The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device on trucks or other moving vehicles for the purpose of attracting attention to any cause or demonstration, or for advertising any show, sale or display of merchandise when such use is done in a manner which causes a noise disturbance.

3. Vehicular Sound Amplification Systems - Operating or controlling a motor vehicle in either a public or private place within the city and operating any sound device which is part of, or connected to, any radio, stereo receiver, compact disc player, cassette tape player, or other similar device in the motor vehicle, in such a manner that, when operated, it is audible at a distance of thirty feet (30'), or when operated, causes a person to be aware of the vibration accompanying the sound at a distance of thirty feet (30') from the source when such operation is done in a manner which causes a noise disturbance.

4. Yelling, Shouting, Etc. - The yelling, shouting, crying, hooting, whistling or singing of peddlers, hawkers or any other person within Howe in such a manner as to cause a noise disturbance.

5. Loading Operations - The loading or unloading of any vehicle within Howe in such a manner as to cause a noise disturbance.

6. Construction/Maintenance Work –

a. Operating or permitting to be operated any equipment used in construction, maintenance, repair, alteration or demolition work on buildings,

structures, streets, alleys, lawns, golf courses or appurtenances thereto and/or the erection, including excavation, demolition, alteration or repair of any building within a residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance *per se* if conducted outside the hours of:

Monday through Friday	7:00 a.m. to 7:00 p.m.
Saturday	8:00 a.m. to 7:00 p.m.
Sunday	12:00 p.m. to 7:00 p.m.

b. Operating or permitting to be operated any gravel pit, rock crusher or other machinery for the separation, gathering, grading, loading or unloading of sand, rock or gravel, within a residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance *per se* if conducted outside the hours of:

Monday through Friday	7:00 a.m. to 7:00 p.m.
Saturday	8:00 a.m. to 7:00 p.m.
Sunday	12:00 p.m. to 7:00 p.m.

c. Operating or permitting to be operated any equipment used in construction, maintenance, repair, alteration or demolition work on buildings, structures, streets, alleys, lawns, golf courses or appurtenances thereto within a non-residential district in such a manner as to cause a noise disturbance.

d. Operating or permitting to be operated any gravel pit, rock crusher or other machinery for the separation, gathering, grading, loading or unloading of sand, rock or gravel within a non-residential district in such a manner as to cause a noise disturbance.

7. Power Equipment –

a. Operating or permitting to be operated any power equipment (as defined herein and excluding construction equipment which is specifically regulated by Paragraph 6 above) within a residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a

noise disturbance. Furthermore, any such activity shall create a noise disturbance *per se* if conducted outside the hours of:

Monday through Friday 7:00 a.m. to 7:00 p.m.

Saturday 8:00 a.m. to 7:00 p.m.

Sunday 12:00 p.m. to 7:00 p.m.

b. Operating or permitting to be operated any power equipment (as defined herein and excluding construction equipment which is specifically regulated by Paragraph 6 above) within a non-residential district in such a manner as to cause a noise disturbance.

8. Motor Vehicles-Repairs or Testing –

a. The repairing, rebuilding, modifying or testing of any motor vehicle (including off-road vehicles) or watercraft within a residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance *per se* if conducted between the hours of 10:00 p.m. and 7:00 a.m.

b. The repairing, rebuilding, modifying or testing of any motor vehicle (including off-road vehicles) or watercraft within a non-residential district in such a manner as to cause a noise disturbance.

9. Motor Vehicles-Running Loud or Out of Repair –

a. The use of any automobile, motorcycle or other vehicle so out of repair, so modified, or so loaded, which emits or creates loud or unnecessary grading, grinding or rasping noise, the excessive spinning of the tires, or the racing of a motor vehicle engine unnecessarily within a residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, such activity shall create a noise disturbance *per se* if conducted between the hours of 10:00 p.m. and 7:00 a.m.

b. The use of any automobile, motorcycle or other vehicle so out of repair, so modified, or so loaded, which emits or creates loud or unnecessary grading, grinding or rasping noise, the excessive spinning of the tires, or the racing of a motor vehicle engine unnecessarily within a non-residential district in such a manner as to cause a noise disturbance.

10. Motor Vehicles-Exhaust - The discharge into the open air of the exhaust of any motor vehicle in such a manner as to cause a noise disturbance, except as discharged through a muffler or other device which effectively and efficiently prevents loud and unusual noises and annoying smoke.

11. Impulsive Sources - Causing impulsive sound sources including, but not limited to, the use of fireworks, explosives, the firing of guns or other explosive devices within Howe in such a manner as to cause a noise disturbance. This is not intended to preclude any existing ordinances prohibiting such acts.

12. Powered Model Mechanical Devices –

a. The flying of model aircraft powered by internal combustion engines, whether tethered or not, or the firing or operating of model rocket vehicles or other similar noise producing devices, within a residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance *per se* if conducted between the hours of 10:00 p.m. and 7:00 a.m.

b. The flying of model aircraft powered by internal combustion engines, whether tethered or not, or the firing or operating of model rocket vehicles or other similar noise producing devices within a non-residential district in such a manner as to cause a noise disturbance.

13. Refuse Compacting Vehicles - Operating or permitting to be operated any refuse compacting, processing or collection vehicle or parking lot sweeper in any residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone in such a manner as to cause a noise disturbance.

14. Quiet Zone - Creating a noise disturbance on any street adjacent to any school, hospital, clinic, library or other noise sensitive facility.

15. 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.

16. Stationary Non-Emergency Signaling Devices - Sounding or permitting the sounding of any electronically activated or amplified signal from any stationary bell, chime, siren, whistle, or similar device, intended primarily for nonemergency purposes, from any place for more than five (5) minutes during any consecutive sixty (60) minute period which causes a noise disturbance. Except such signaling

device is allowed if used as a danger signal, and/or as required by law if vehicle is backing, starting or turning in such a way as to likely cause a collision.

SECTION 6: Exemptions.

The following sources of potential noise disturbances shall be exempt from the regulations of this Ordinance:

- A. Safety signals, storm warning sirens or horns and the testing of such equipment, emergency vehicle sirens or horns used when responding to an emergency, and emergency pressure relief valves.
- B. Sound caused in the performance of emergency or public service work, including police, fire and public utility operations, acting in the performance of lawful duties to protect the health, safety or welfare of the community.
- C. Sounds caused by natural phenomena.
- D. Activities conducted on public parks and playgrounds which are approved, sponsored or sanctioned by the City. Activities conducted on public or private school grounds including, but not limited to, school athletic and school entertainment events which are approved, sponsored or sanctioned by the school.

SECTION 7: Permits of Variance.

A. The City Administrator, or his/her designated representative, is authorized to grant permits for relief of any provision in this Ordinance on the basis of undue hardship in cases where:

1. The sound source will be of short duration and the activity cannot be conducted in a manner as to comply with this Ordinance;
2. Additional time is necessary for the applicant to alter or modify their activity or operation to comply with this Ordinance; or
3. No reasonable alternative is available to the applicant.

B. An automatic variance will be granted without the payment of permit fees for the purpose of conducting parades or other public events provided that any noise disturbance created by such activity will be abated when such request is made by the City Administrator, or his/her designated representative.

C. The City Administrator, or his/her designated representative, may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects and may suspend any permit issued for violating any provisions prescribed in the permit of variance.

D. A fee of \$25.00 may be charged to each applicant for processing permit applications.

SECTION 8: Appeals.

A. Any applicant who has been denied a permit of variance or any permittee whose permit has been suspended, shall have the right to a hearing before the City Council.

B. Requests for a hearing shall be made in writing and received by the City Administrator, or his/her designated representative, within ten (10) days of the date of the denial or the date of the notice of the suspension. The City Administrator may review the appeal at a staff level and has the authority to reject the action of his/her designated representative and order that a permit be granted or to reinstate a suspended permit. However, should the City Administrator uphold the denial or suspension of a permit, he/she shall, or his/her designated representative shall, schedule a hearing before the City Council within thirty (30) days of receipt of the request.

C. The City Council shall have the authority to review all pertinent files and information regarding the applicant/permittee which are in the custody of the City Administrator, or his/her designated representative. Additionally, the City Council shall have the authority to accept written and verbal testimony from the City Administrator, his/her designated representative, any appropriate city staff member, applicant/permittee and interested citizens. The City Council shall also have the authority to place time restrictions on the testimony to be given at the hearing.

D. The City Council shall have the authority to assess whether the City Administrator, or his/her designated representative, acted properly within the powers granted under this Ordinance in the denial or suspension of a permit. A majority vote of a quorum of the City Council shall determine whether to uphold or reject the City Administrator's, or his/her designated representative's, action. Upholding the action of the City Administrator, or his/her designated representative, shall affirm the denial or suspension. Rejection of the City Administrator, or his/her designated representative's, action shall automatically grant a permit or reinstate a suspended permit. The decision of the City Council shall be final.

E. No person whose permit has been denied or suspended, shall create or allow the creation of the noise disturbance in dispute prior to final determination by the City Council.

SECTION 9: Penalty.

Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of not more than Five Hundred Dollars (\$500.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. Unless otherwise specifically set forth in this Section or in state law, as adopted, allegation and evidence of a culpable mental state is not required for proof of the violation of any provision of this Section.

SECTION 10: Injunctive Relief.

In addition to and accumulative of all other penalties, Howe shall have the right to seek injunctive relief for any and all violations of this Ordinance.

SECTION 11: Severability Clause.

It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable and the invalidity of any section, clause or provision or part or portion of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

SECTION 12: Repealing and Saving Clauses.

All Ordinances in conflict herewith are repealed to the extent they are in conflict. Any remaining portions of conflicting ordinances shall remain in full force and effect.

SECTION 13: Effective Date.

This Ordinance shall become effective from and after its adoption and publication as required by the City Charter and by law.

SECTION 14: Lawful Meeting.

That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public as required by law and that public notice of the time, place, and purpose of said meeting was given as required.

PASSED AND APPROVED THIS 19th day of March, 2019.

Jeff Stanley, Mayor

ATTEST

Joy Stevens
City Secretary