

ORDINANCE NO. 1794R

AN ORDINANCE OF THE CITY OF DUNCANVILLE, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF DUNCANVILLE, TEXAS, BY REPEALING CHAPTER 12, "MISCELLANEOUS OFFENSES AND PROVISIONS," BY ADDING AN AMENDING ARTICLE 1 'IN GENERAL', SECTION 12-3 'LOUD AND RAUCOUS NOISE' IN ITS ENTIRETY AND REPLACING IT WITH NEW SECTION 12-3 'LOUD AND RAUCOUS NOISE'; PROVIDING A REPEALING CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Duncanville is a home rule city under the laws of the State of Texas and is duly incorporated; and

WHEREAS, the City Council of the City has determined that the amendment of said section best serves the general welfare of the City and its residents to promote the health, safety, and welfare of the public.

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

SECTION 1. That Chapter 12, "Miscellaneous Offenses and Provisions," of the Duncanville Code of Ordinances is hereby amended by repealing Article I, "In General", Section 12-3 "Loud and raucous noise" in its entirety and replacing it with a new Section 12-3 'Loud and raucous noise' to hereinafter read as follows:

"CHAPTER 12 - MISCELLANEOUS OFFENSES AND PROVISIONS

ARTICLE I. IN GENERAL

Sec. 12-1. - Reserved.

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Sec. 12-3. - Loud and raucous noise.

- (a) It shall be unlawful for any person to make, cause or allow to be made any unreasonably loud or raucous noise within the city which may be offensive to a reasonable person of normal sensitivity within the area of audibility as provided in this Section.

(b) Prohibitions - The following acts are deemed to create unreasonably loud or raucous noise in violation of Section (a), and shall be deemed to be prima facie evidence of a violation of sections; such enumerated acts shall not be deemed exclusive:

- 1) The playing of any horn, radio, musical instrument or other loud-speaking or noise-making device or attachment, or vocal shouting or outcry for purposes of selling anything, in a public or private place, in such a manner or volume as to disturb the peace, quiet, and comfort of a reasonable person of normal sensitivity. It shall be a defense to an offense charged under this subsection if the noise results from or is caused by the usual and reasonable operation of railroads, the reasonable use of automobile warning signals or horns, the reasonable ringing of church bells, or the reasonable or ordinary noises attendant upon athletic contests or lawful public or semipublic meetings, parades, celebrations, or children at play.
- 2) The playing of any horn, radio, musical instrument, or other loud-speaking or noise-making device or attachment on any premises under the ownership, management, or control of such person, when such premises are being used as a place of business, in such a manner or volume as to disturb the peace or to be unreasonably offensive to reasonable persons of normal sensitivity in the vicinity or occupants of other premises in the vicinity.
- 3) To create, make, cause, or allow to be made by any means any loud and disturbing noise, including noise from vehicle repairs or exhaust, construction or combustion engines, which may disturb a reasonable person of normal sensitivity in the vicinity of any public or private place after 10:00 p.m. and before 7:00 a.m.
- 4) Operating of or in control of a motor vehicle by operating in either a public or private place while playing any sound amplifier which is part of, or connected to, the vehicle stereo system or any other similar device in the motor vehicle, in such a manner that when operated, it is audible at a distance of 30 feet from the source or causes a reasonable person of normal sensitivity to be aware of the vibration accompanying the sound at a distance of 30 feet from the source.

(c) Defenses – It shall be a defense to a violation of this Section if any person is engaged individually or acting in concert with others as follows:

- 1) *Motor vehicles on city trafficways* – motor vehicles on trafficways of the City provided unless such conduct violates Section 12-3(a)(b)(1).
- 2) *Utility repairs* – Repairs of utility which pose a clear and immediate danger to life, health, or significant loss of property

- 3) *Emergency sirens, whistles, etc.* – operation by governmental entities of sirens, whistles, alarms, or noise used to alert persons of emergency or operation of public safety vehicles.
 - 4) *Repairs or excavations* – repairs or excavations of bridges, streets, or highways by or on behalf of the city, the State, or the federal government, or its authorized contractors.
 - 5) *Outdoor school and playground activities* – reasonable activities conducted on public school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to athletic and entertainment events.
 - 6) Other events special events **permitted** by the city
- (d) Habitual offenders or locations – If the same residence, business, or vehicle is the source of three or more violations in a continuing twenty-four -month period and ownership has not changed for that residence, business, or vehicle, and each such subsequent violation the maximum fine allowable may be assessed upon conviction.
- (e) Enforcement –
- 1) The City Police Department and its officers will have primary responsibility for the enforcement of the noise ordinance contained herein. Nothing in this article shall prevent the Police Department and its officers from obtaining voluntary compliance by way of warning, notice, or education.
 - 2) If a person’s conduct would otherwise violate this section and consists of loud noise speech or communication not based on control by noise levels; of a gathering with others to hear or observe speech or communication; or of a gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions; the person may be ordered to, and have the opportunity to move, disperse, or otherwise remedy the violation prior to enforcement of this section.”

SECTION 2. That all ordinances of the City of Duncanville, Texas in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the City of Duncanville, Texas not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. That an offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 4. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision hereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 5. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Duncanville, Texas as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense.

SECTION 6. That this ordinance shall take effect from and after its passage and the publication of the caption as the law and Charter in such cases provide.

SECTION 7. This Ordinance shall take effect immediately upon adoption.

DULY PASSED by the City Council of the City of Duncanville, Texas, on the 1st day of February, 2022.

APPROVED:

Barry L. Gordon, Mayor

ATTEST:

Kristin Downs, City Secretary

APPROVED AS TO FORM:

Robert E. Hager, City Attorney