

ORDINANCE NO. 2404

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, PROVIDING FOR THE ESTABLISHMENT OF NOISE CONTROL WITHIN THE CITY OF MESQUITE, TEXAS; PROVIDING FOR CONTRACTS AND PURCHASES; PROVIDING FOR DEFINITIONS; PROVIDING FOR ADMINISTRATION AND NOISE MEASUREMENTS; PROVIDING FOR ENVIRONMENTAL SOUND LEVELS; PROVIDING FOR THE PROHIBITION OF VARIOUS NOISES; PROVIDING FOR EXEMPTIONS; PROVIDING FOR PERMITS OF VARIANCES; PROVIDING FOR APPEALS; PROVIDING FOR PROPOSED DEVELOPMENTS; PROVIDING FOR ENFORCEMENT; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO HUNDRED (\$200.00) DOLLARS; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND DECLARING AN EMERGENCY.

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

SECTION I. CONTRACTS AND PURCHASES

A. It is the policy of the City of Mesquite, that all its departments shall comply with the provisions and intent of this ordinance and that contractors and subcontractors shall be required to comply with the provisions of this ordinance in their operations.

SECTION II. DEFINITIONS

Terminology - All terminology used in this ordinance not defined below, shall be in conformance with applicable publication of the American National Standards Institute (ANSI), or its successor body.

1. **Ambient (Background) Sound Pressure Level** - the all-encompassing sound associated with a given environment, being usually a composite of sounds from all sources, excluding the alleged offensive sound, at the location and approximate time at which a comparison with the alleged offensive sound is to be made.

2. **Construction** - any site preparation, assembly, erection, substantial repair, alteration, or similar action excluding demolition, for or of public or private right-of-ways, structures, utilities or similar property.

3. **Cyclically Varying Noise** - any sound which varies in sound level such that the same level is obtained repetitively at relatively uniform intervals of time.

4. **Decibel (dB)** - a unit for measuring the volume of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micro-newtons per square meter), denoted as dB.

5. **Demolition** - any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

6. **Device** - any mechanism which is intended to produce, or which actually produces, noise when operated or handled.

7. **Director** - the City Manager of Mesquite or his designated representative.

8. **Emergency Vehicle** - a motor vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.

9. **Emergency Work** - any work performed for the purpose of preventing or alleviating physical trauma or property damage threatened or caused by an emergency.

10. **Energy Equivalent Sound Level (Leq)** - the sound level corresponding to the average sound energy during a specified period of time. Its calculation involves the conversion of decibels (a logarithmic quantity) to corresponding intensities (a linear quantity), performing the averaging, and finally changing the average back to decibels.

11. **Impulsive Sound** - sound characterized by a peak less than one second in length, an abrupt onset, a rapid decay, and a peak sound level which exceeds the ambient sound level by 20 dB(A) or more.

12. **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.

13. **Noise** - any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

14. **Noise Disturbance** - any unreasonably loud, disturbing and unnecessary noise which is offensive to an adult person within the City, which noise renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort.
15. **Person** - any individual, firm, association, partnership, corporation or any other entity, public or private.
16. **Powered Model Vehicle** - any self-propelled airborne, waterborne, or landborne plane, vessel, or vehicle, which is not designed to carry persons, including, but not limited to, any model airplane, boat, car, or rocket.
17. **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.
18. **Public Property** - any real property or structures thereon which are owned or controlled by a governmental entity.
19. **Public Right-of-Way** - any street, avenue, boulevard, highway, sidewalk, alley, or similar place which is owned or controlled by a governmental entity.
20. **Pure Tone** - any sound which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of this ordinance, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies of 500 Hz and above and by 8 dB for center frequencies between 160 and 400 Hz and by 15 dB for center frequencies less than or equal to 125 Hz.
21. **Quiet Zone** - any area designated by the Director for the purpose of ensuring exceptional quiet.
22. **Repetitive Impulsive Sound** - any sound which is composed of impulsive sounds that are repeated at sufficiently slow rates such that a sound level meter set at "fast" meter characteristic will show changes in sound pressure level greater than 10 dB(A).
23. **Sound Level** - the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in American National Standards Institute specifications for sound level meters. If the frequency weighting employed is not indicated, the A-weighting shall apply.
24. **Sound Level Meter** - an instrument for the measurement of sound, including a microphone, amplifier, RMS detector and integrator, time averager, output meter and weighted networks, that is sensitive to pressure fluctuations. The instrument reads sound pressure levels when properly calibrated and is of Type II or better so specified in ANSI Publication S1.4 - 1971 or its successor body.

25. **Sound Pressure Level** - expressed in decibels, 20 times the logarithm to the base 10 of the ratio of the pressure of the sound to a reference pressure, which reference pressure shall be explicitly stated.

26. **Stationary Sound Source** - any device, fixed or movable, which is located or used on property other than a public right-of-way.

27. **Use Districts** - those districts established by the City of Mesquite Zoning Ordinance. Planned Development Districts, for the purposes of this ordinance, shall be considered as residential, commercial, or industrial districts according to the primary use.

28. **Vibration** - an oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity, or acceleration with respect to a given reference point.

SECTION III. ADMINISTRATION AND NOISE MEASUREMENT

A. The Noise Control Program required by this ordinance shall be administered by the Director of the City of Mesquite.

B. In order to implement and enforce this ordinance and for the general purpose of sound and vibration abatement and control, the Director or his appointed representative shall have the power to:

Upon presentation of the proper credentials, make necessary inspections and tests with the proper authorization or permission from the owner on any private property or place.

C. Sound level measurement shall be made with a sound level meter Type II or better using the "A" weighting network in accordance and conforming with the noise measurements standards promulgated by the American National Standards Institute or its successor body.

SECTION IV. ENVIRONMENTAL SOUND LEVELS

A. The following noise standards, unless otherwise specifically indicated, shall apply to all property with a designated land use district.

TABLE 1. LIMITING SOUND LEVELS FOR LAND USE DISTRICTS

Land Use District	Time of Day Monday - Sunday *	Energy Equivalent Sound Levels (Leq)
Residential*	10:00 p.m. to 7:00 a.m.	52 dB(A)
	7:00 a.m. to 10:00 p.m.	62 dB(A)
Office, Retail Commercial	10:00 p.m. to 7:00 a.m.	62 dB(A)
	7:00 a.m. to 10:00 p.m.	67 dB(A)
Industrial	Anytime	70 dB(A)

* Outside construction activity prohibited on Sunday. The erection, including excavation, demolition, exterior alteration/repair of any building in a residential district, or within five hundred (500) feet of any residence, is prohibited on Sunday.

B. It shall be unlawful for any person at any location in the City of Mesquite to create any noise, or to allow the creation of any noise on property owned, leased, occupied or otherwise controlled by the boundaries of the property on which the noise is produced, or measured within any other residential dwelling unit or commercial space, to exceed:

1. The noise standard in any measurement period not less than 30 minutes; or
2. The noise standard plus 15 dB(A) in any one minute average of a measurement period; or
3. The noise standard plus 20 dB(A) at any time in a measurement period.

C. For the purpose of enforcing these provisions a measurement period shall not be less than thirty (30) minutes.

D. In the event the ambient sound level exceeds the resulting standards, the ambient level shall be the standard.

E. If the intruding noise source is continuous and cannot reasonably be discontinued or stopped for a time period whereby the ambient sound level can be determined, the measured sound level obtained while the source is in operation shall be compared directly to the applicable standard in the receiving land use district on which the sound is measured.

F. Correction for character of sound.

1. For any stationary source of sound which emits a pure tone, cyclically varying sound, or repetitive impulsive sound, the limits set forth in Table 1 shall be reduced by 5 dB(A).

2. Notwithstanding compliance with part (1) of this subsection, it shall be a violation of this ordinance for any person to operate or permit to be operated any stationary source of sound which emits a pure tone, cyclically varying, or repetitive impulsive sound which creates a noise disturbance.

G. When the land use district design of the property on which the source of sound originates differs from the designation of the property on which the sound is measured, the maximum permissible sound level of the more restrictive land use district designation shall apply.

H. For sound emitted on public property, the measurement distance shall be fifty (50) feet (15 meters) and the sound level limit for the appropriate land use district shall apply.

SECTION V. NOISE PROHIBITED

A. No person shall allow, make or cause to be made any unreasonably loud, disturbing and unnecessary noise in the City which is offensive to an adult person within the City, which noise renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort, nor shall any person allow, make or cause to be made any unreasonably loud, disturbing and unnecessary noise in the City.

B. The following activities, among others but not to exclude other such acts, are declared to create loud, disturbing and unnecessary noises in violation of this ordinance, unless a permit of variance as provided in Section VII is first obtained, namely:

1. Animals - owning, keeping, possessing, or harboring any animal or animals which, by noise making, disturb or interfere with the peace, comfort, or repose of neighboring residents, or cause a noise disturbance. The provisions of this section shall apply to all public and private 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, loud speakers and sound amplifiers or other machine or device for the producing or reproducing of sound in such a manner as to violate Section IV or cause a noise disturbance.

(b) The operation of any such radio, instrument, phonograph, television set, machine, loud speakers or similar device between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of fifty (50) feet from the building structure or vehicle in which it is located, shall be prima facie evidence of a violation of this section.

(c) The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by the creation of noise to any cause or demonstration; or to any performance, show, sale or display of merchandise so as to attract customers to any place of business.

(d) The use of mechanical devices, loudspeakers, sound amplifiers or other instruments or devices 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.

3. Yelling, Shouting, etc. - The yelling, shouting, crying, hooting, whistling or singing of peddlers, hawkers or any other person in a manner that causes a noise disturbance.

4. Loading Operations - the loading or unloading of any vehicle between the hours of 7:00 p.m. and 7:00 a.m. the following day on any premises in a residential district, or within five hundred (500) feet of any residence in such a manner as to cause a noise disturbance.

5. Construction Work - operating or permitting to be operated any equipment used in commercial construction, repair, alteration or demolition work on buildings, structures, streets, alleys or appurtenances thereto which exceed the sound level limits for an industrial land use as set forth in Section IV as measured on the property boundary of the receiving land use.

The erection, including excavation, demolition, alteration or repair of any building in a residential district, or within five hundred (500) feet of any residence is prohibited on Sunday.

6. Vehicle Repairs or Testing - the repairing, rebuilding, modifying or testing of any motor vehicle (including off-road vehicles) or watercraft on private property, on a public right-of-way, on a public space, or in a quiet zone, between the hours of 10:00 p.m. and 7:00 a.m. the following day in such a manner as to cause a noise disturbance.

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

8. Powered Model Mechanical Devices - 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, between the hours of 10:00 p.m. and 7:00 a.m. the following day in such a manner as to cause a noise disturbance.

9. Refuse Compacting Vehicles - operating or permitting to be operated any refuse compacting, processing or collection vehicle or parking lot sweeper between the hours of 10:00 p.m. and 7:00 a.m. the following day in any residential district, or within five hundred (500) feet of any residence in such a manner as to cause a noise disturbance.

10. Quiet Zone - creating a noise disturbance on any street adjacent to any school, hospital, clinic or other noise sensitive facility, when conspicuous signs are located at such streets indicating that schools, hospitals, clinics or other noise sensitive facilities are adjacent thereto.

11. 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 fifty (50) feet from the source if on a public space or public right-of-way.

12. 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 non-emergency purposes, from any place for more than five (5) minutes during any consecutive sixty (60) minute period.

SECTION VI. EXEMPTIONS

The following sources of potentially excessive sound shall be exempt from noise control regulation:

1. 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.
2. Sound caused in the performance of emergency or public service work, including public utility operations, acting to protect the health, safety or welfare of the community.
3. Sounds caused by natural phenomena.
4. Activities conducted on public parks, public playgrounds and public or private school grounds including, but not limited to, school athletic and school entertainment events.

SECTION VII. PERMITS OF VARIANCE

The Director 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.
3. No reasonable alternative is available to the applicant.
4. An automatic variance will be granted 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 a City official authorized to enforce this ordinance.

The City Manager or 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.

SECTION VIII. APPEALS

1. 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.
2. Requests for a hearing shall be made in writing and received by the Director within ten (10) days of the date of the denial or the issuance date of the notice on suspension. The Director shall schedule a hearing before the City Council within twenty (20) days of receipt of the request.
3. 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 Director. Additionally, the City Council shall have the authority to accept written and verbal testimony from the Director, Applicant, and interested citizens.
4. The City Council shall have the authority to assess whether the Director acted properly within its powers under this ordinance in its denial or suspension of permit. The majority vote of the City Council shall determine whether to uphold or reject the Director's action. Upholding the action of the Director shall affirm the denial or suspension. Rejection of the Director's action shall automatically reinstate a suspended permit.
5. No person whose Permit has been denied or suspended, shall create or allow the creation of the noise in dispute prior to final determination by the City Council.

SECTION IX. PROPOSED DEVELOPMENTS

Any person who makes application for a certificate of occupancy or a building permit that may result in the creation of excessive noise or may create a violation of any provision of this Ordinance shall consult with the Director or his designated representative prior to any such application.

SECTION X. ENFORCEMENT RESPONSIBILITY

The City Manager or designated representative will have enforcement responsibility for this ordinance.

SECTION XI. PENALTY

That any person, firm, or corporation violating any of the provisions or terms of this ordinance upon conviction shall be punished by a fine not to exceed the sum of Two Hundred (\$200.00) Dollars for each offense. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

SECTION XII. INJUNCTIVE RELIEF

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

SECTION XIII. SEVERABILITY CLAUSE

If any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be judged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any portion thereof other than that portion so decided to be invalid or unconstitutional.

SECTION XIV. REPEALER CLAUSE

That all ordinances or provisions of the Code of the City of Mesquite in conflict with this Ordinance are repealed to the extent of such conflict.

SECTION XV. DECLARING AN EMERGENCY

The fact that there is an urgent need to regulate the noise level within the City of Mesquite, creates an urgency and an emergency for the protection of the public health, safety and welfare and requires that this ordinance shall take effect from and after its passage and the publication of the caption as the law and the Charter in such cases provide.

DULY PASSED by the City Council of the City of Mesquite, Texas, on
this the 16th day of March, 1987.

Mrs. Brunhilde Nyström
Mrs. Brunhilde Nyström
Mayor

ATTEST:

Lynn Prugel
Lynn Prugel
City Secretary

APPROVED AS TO FORM:

Elizabeth A. Lunday
Elizabeth A. Lunday
Assistant City Attorney

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