

ORDINANCE NO. 4974

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 9, ARTICLE VII OF THE MESQUITE CITY CODE BY ADDING A NEW SECTION 9-249 REGARDING ENGINE COMPRESSION BRAKING BEING PROHIBITED IN THE CITY; AMENDING CHAPTER 10, ARTICLE III – NOISE, SECTION 10-71 – OFFENSES, TO ADD ENGINE COMPRESSION BRAKING TO THE LIST OF NOISE OFFENSES; PROVIDING A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED \$500.00 FOR EACH OFFENSE; PROVIDING FOR PUBLICATION; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, it is the intent of the City Council of the City of Mesquite, Texas (“**City Council**”), to protect the public health, safety, and welfare; and

WHEREAS, the City of Mesquite, Texas, (“**City**”) is a home-rule municipality acting under its Charter adopted, and amended, by the electorate pursuant to Article 11, [Section 5](#) of the Texas Constitution and [Chapter 9](#) of the Texas Local Government Code; and

WHEREAS, a home-rule municipality has full power of local self-government, pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 51, [Section 51.072\(a\)](#); and

WHEREAS, the City shall have the power to enact and enforce ordinances necessary to protect health, life, and property and to prevent and summarily abate and remove all nuisances, and to preserve and enforce good government and order and security of the City and its inhabitants, pursuant to Article III, [Section 2](#) of the Mesquite City Charter; and

WHEREAS, a home-rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants, pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 54, [Section 54.004](#), as amended; and

WHEREAS, the City shall have the power to enact and enforce ordinances necessary to protect health, life and property and to prevent and summarily abate and remove all nuisances, and to preserve and enforce good government and order and security of the City and its inhabitants, pursuant to Mesquite City Charter, Article III, Section 2; and

WHEREAS, the City Council finds that it is in the best interests of the citizens of the City to amend the Mesquite City Code as herein provided.

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

SECTION 1. Chapter 9, Article VII – Commercial Vehicles of the Code of the City of Mesquite, Texas, is hereby amended by adding a *new* Section 9-249 to read as follows, and in all other respects said Code, Chapter, Article, and Sections to remain in full force and effect:

* * *

Sec. 9-249. Engine compression braking prohibited.

- (a) *Definitions.* For the purposes of this section:
 - (1) *Engine compression brake* means a vehicle retarding device that converts a power producing engine into a power absorbing air compressor in order to reduce motor vehicle speed without the use of the vehicle's foundation brakes.
 - (2) "*Compression braking,*" "*Engine compression braking,*" "*Engine-exhaust braking*" means to utilize a vehicle's engine compression brake.
- (b) *Offense – Engine compression braking prohibited.* A person commits an offense if he uses engine compression braking to slow or stop a motor vehicle in the City.
- (c) *Exceptions.* The provisions of this section shall not apply to:
 - (1) Vehicles owned or operated by a local, state, or federal governmental entity.
 - (2) Vehicles owned or operated by any school district.
- (d) *Defense.* It is a defense to prosecution under this section that the engine compression brake was used in an emergency situation to prevent or reduce an imminent danger of death or bodily injury to a person or damage or destruction to property.
- (e) *Signs.* The City Manager, or his or her designee, may erect signs and markings providing "NO ENGINE BRAKING." Such signs and markings shall be in accordance with applicable federal law, and the Texas Manual on Uniform Traffic Control Devices.

Cross reference – Noise prohibited; [Chapter 10](#), Art. III, [Section 10-71](#).

Secs. 9-250 – 9-265. – Reserved.

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SECTION 2. Chapter 10, Article III. – Noise of the Code of the City of Mesquite, Texas, is hereby amended by revising Section 10-71. – Offenses to read as follows, and in all other respects said Code, Chapter, Article, and Sections to remain in full force and effect:

[Editor's Note: Make the following revisions with additions identified in green font and underlined.]

Sec. 10-71. – Offenses.

* * *

(b) *Other Noise Offenses.*

- (1) *Noise made by animals.* See Chapter 4 “Animals”, Article VII, [Section 4-266](#) (Noise made by animals), or successor, and as amended.
- (2) *Muffler required.* See Texas Transportation Code, Title 7, Subtitle C, Chapter 547, Subchapter K, [§ 547.604](#) (Muffler required), or successor, and as amended.
- (3) *Engine compression braking prohibited.* See Chapter 9 “Motor Vehicles and Traffic”, Article VII – Commercial Vehicles, [Section 9-249](#) (Engine compression braking prohibited), or successor, and as amended.
- (4) *Noise from the idling of commercial motor vehicles.* The City’s authority to enforce control requirements for idling of commercial motor vehicles is derived from the Texas Administrative Code, Title 30, Part 1, Chapter 114, Subchapter J, [Division 2](#) “Locally Enforced Motor Vehicle Idling Limitations”, [Rule § 114.510](#) et seq. See also, Mesquite City Code, Chapter 9 “Motor Vehicles and Traffic”, Article XI, [Section 9-342](#) (Noise from the idling of commercial motor vehicles), or successor, and as amended.
- (5) *Disorderly conduct.* See Texas Penal Code, Title 9, Chapter 42, [§ 42.01](#) (Disorderly Conduct), or successor, and as amended.

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SECTION 3. In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Mesquite and the provisions of this Ordinance, the provisions of this Ordinance shall be controlling.

SECTION 4. That should any word, sentence, clause, paragraph, or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 5. Any violation of the provisions or terms of this ordinance by any “person,” as defined in Mesquite City Code, Chapter 1, [Section 1-2](#), shall be deemed a Class C Misdemeanor criminal offense, and upon conviction thereof, shall be subject to a penalty of fine, or any other general penalties, as provided in Mesquite City Code, Chapter 1, [Section 1-6](#), as amended.

SECTION 6. This ordinance shall be published in the City’s official newspaper in accordance with Mesquite City Charter, Article IV, [Section 24](#).

SECTION 7. This ordinance shall take effect on, and be in force from and after, five (5) days after publication thereof, in accordance with Mesquite City Charter, Article IV, [Section 24](#), and it is accordingly so ordained.

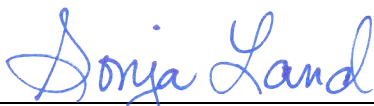
DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 15th day of August 2022.



Daniel Alemán, Jr.
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:



Sonja Land
City Secretary



David L. Paschall
City Attorney