



**CITY OF TYLER, TEXAS  
CITY COUNCIL COMMUNICATION**

**Agenda Number:** O-2

**Date:** May 9, 2007

**Subject:** Request that the City Council consider adoption of an ordinance amending the loud and raucous noise provisions in Tyler City Code Chapter 4 to adopt a new regulation regarding the improper use of engine brakes.

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**Item Reference:** Tyler City Code Chapter 4, Article VI., Loud and Raucous Noises

The Tyler City Code currently contains noise regulations in Chapter 4, Article VI. Tyler City Code Section 4-90 makes it unlawful to make, continue, or cause to be continued any loud or raucous noise which is offensive to persons in the vicinity thereof, and which substantially impairs the peaceable enjoyment of public or private property. A non-exclusive list of certain “kinds” of loud and raucous noises is contained in Section 4-90.b. Certain exceptions for federal, state and local governments, as well as other types of official or emergency activities, are included in Section 4-90.c.

Many municipalities have adopted regulations to prohibit the use of engine brakes in a manner that causes a loud or unusual noise. Such noises are not only offensive to persons in the vicinity, but can also create a safety issue involving adjacent motorists and pedestrians. It is now recommended that the non-exclusive list of “loud and raucous” noises in Section 4-90 be amended to include a specific reference to the use of engine brakes in such a manner or at such a time of day that it creates an excessive, loud, unusual or explosive noise from the vehicle.

**REVIEW BY TRAFFIC SAFETY BOARD**

City Code Section 17-30.c. states that the Traffic Safety Board shall make recommendations through the Traffic Engineer regarding safety as it deems necessary. On April 5, 2007, the Traffic Safety Board reviewed this proposed ordinance and voted to recommend approval of this ordinance to the City Council.

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**RECOMMENDATION:**

It is recommended that the City Council adopt the attached ordinance amending the loud and raucous noise provisions in Tyler City Code Chapter 4 to include the improper use of engine brakes.

**Drafted/Recommended By:  
Department Leader**



**Kirk Houser, Traffic Engineer**

**Edited/Submitted By:  
City Manager**

**ORDINANCE NO. O-2007-51**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 4, "OFFENSES AND MISCELLANEOUS PROVISIONS," ARTICLE VI, "MISCELLANEOUS OFFENSES", OF THE CODE OF ORDINANCES, CITY OF TYLER, TEXAS, BY AMENDING THE LOUD AND RAUCOUS NOISE PROVISIONS TO INCLUDE THE IMPROPER USE OF ENGINE BRAKES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, it is the intent of the City Council to protect the public health, safety, and welfare; and

**WHEREAS**, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and welfare of citizens; and

**WHEREAS**, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

**WHEREAS**, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to self-government; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

**WHEREAS**, Section 1 of the Tyler City Charter provides that the City of Tyler may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

**WHEREAS**, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, or when not prescribed by the Charter, in such manner as shall be provided by ordinances or resolutions of the City Council; and

**WHEREAS**, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

**WHEREAS**, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by the State law and the Charter, all of powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

**WHEREAS**, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

**WHEREAS**, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

**WHEREAS**, Texas Transportation Code Section 542.201 provides that a local authority may regulate traffic in a manner that does not conflict with Texas Transportation Code Chapter 542, Title 7, Subtitle C; and

**WHEREAS**, Tyler City Code Section 17-30.c. states that the Traffic Safety Board shall make recommendations through the Traffic Engineer regarding safety as it deems necessary; and

**WHEREAS**, on 04/06/07, the Traffic Safety Board voted to recommend approval of this ordinance;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS;**

**PART 1:** That Tyler City Chapter 4, “Offenses and Miscellaneous Provisions,” Article VI., “Miscellaneous Offenses”, Section 4-90, “Loud and Raucous Noises”, is hereby amended by amending Section 4-90, subsection b., by adding a new Subsection 9. to read as follows:

9. The use or operation of any device that is equipped on any motor vehicle and that is designed to aid in braking, decompression or deceleration, in such a manner or at such a time that results in an excessive, loud, unusual or explosive noise from such vehicle. (Ord. No. 0-2007-51; 5/9/07)

**PART 2:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**PART 3.** That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall become effective upon its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be May 11, 2007.

PASSED AND APPROVED this 9<sup>th</sup> day of May, A. D., 2007.

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JOSEPH O. SEEBER, MAYOR  
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

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CASSANDRA BRAGER, CITY CLERK

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CITY ATTORNEY