



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: O-

Date: July 25, 2007

Subject: Request that the City Council consider adopting an Ordinance amending Tyler City Code Chapter 4 to state expressly that loud and raucous noises constitute public nuisances, and amending the regulations related to construction noise to allow an exception in some circumstances for certain activities deemed necessary to meet the best practices of building construction.

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Item Reference: Texas Constitution Article 11, Section 5; Texas Local Government Code Chapter 9; Texas Local Government Code Sections 51.001 and 51.072; Texas Local Government Code Section 217.042; Tyler City Charter Sections 1, 2 and 6; Tyler City Code Chapter 4, Article VI.

PUBLIC NUISANCES

State law, at Texas Local Government Code Section 217.042(b), provides that a home-rule municipality may define and prohibit any nuisances within the limits of the municipality and within 5,000 feet thereof. Furthermore, Texas Local Government Section 217.042(b) states that a home-rule municipality may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance. Tyler City Code Section 4-90 currently prohibits loud and raucous noises that are offensive to persons in the vicinity thereof and which substantially impair the peaceable enjoyment of public or private employment. Although loud and raucous noises have always been considered to be public nuisances, it is important to amend Section 4-90 to state expressly that loud and raucous noises constitute public nuisances.

CONSTRUCTION NOISE

City Code Section 4-90.b. contains a non-exclusive list of examples of loud and raucous noises. Construction and excavation work can sometimes constitute a violation, if the noise last for more than one day. From time to time, the City encounters situations where construction may need to last longer than a day, and/or occur at specific times of the day in order to meet best construction practices. In order to provide Staff with the maximum flexibility to respond to such situations, the City Council may wish to consider providing for an exception to the construction noise regulations by which the City could issue a permit for specific activities when it is determined that the timing and/or duration of construction should occur in a specific manner.

RECOMMENDATION:

It is recommended that the City Council adopt the attached ordinance amending the loud and raucous noise provisions to state expressly that loud and raucous noises constitute public nuisances, and amending the regulations related to construction noise to allow an exception in some circumstances for certain activities deemed necessary to meet the best practices of building construction.

**Drafted/Recommended By:
Department Leader**

Gary C. Landers

Gary C. Landers, City Attorney

**Edited/Submitted By:
City Manager**

ORDINANCE NO. 0-2007-93

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 4, "OFFENSES AND MISCELLANEOUS PROVISIONS", ARTICLE VI, "MISCELLANEOUS OFFENSES", BY AMENDING THE LOUD AND RAUCOUS NOISE REGULATIONS TO DECLARE THAT SUCH NOISES CONSTITUTE PUBLIC NUISANCES, AND AMENDING THE REGULATIONS FOR CONSTRUCTION NOISE TO ALLOW AN EXCEPTION FOR CERTAIN ACTIVITIES DEEMED NECESSARY TO MEET THE BEST PRACTICES OF BUILDING CONSTRUCTION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; 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, 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 Local Government Code Section 217.042(a) provides that a home-rule municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet thereof; and

WHEREAS, Texas Local Government Code Section 217.042(b) provides that a home-rule municipality may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance; 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 may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

WHEREAS, Section 1 of the Tyler City Charter states that the City 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

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, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and 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 State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

WHEREAS, it is important to amend the loud and raucous noise regulations in Tyler City Code Section 4-90;

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

PART 1: That Tyler City Code Chapter 4, “Planning and Zoning”, Article IV., “Zoning”, is hereby amended by amending Section 4-90 to read as follows:

Sec. 4-90. Loud, raucous noises prohibited; prohibited noises enumerated, exceptions.

a. It is unlawful to make, continue, or cause to be made or continued any loud or raucous noise which:

1. Is offensive to persons in the vicinity thereof; and
2. Substantially impairs the peaceable enjoyment of public or private property;

All loud and raucous noises as defined herein are hereby declared to be public nuisances.

b. The following acts, among others, are loud and raucous noises, and are unlawful:

1. The playing of any radio, stereo, phonograph, musical instrument, or similar device in such manner or with such volume so as to be heard at least fifty (50) feet away, or so as to offend persons in the vicinity;

2. The keeping or harboring of any animal or fowl which emits or makes any noise which by its character, volume, or repetition is offensive to persons in the vicinity;

3. The discharge into open air of the exhaust of any steam or internal combustion engine, whether moveable or stationary, except through a muffler or other device which will effectively prevent the emission of offensive noises therefrom;

4. The erection, excavation, demolition, alteration or repair of any building or structure in or adjacent to a residential area or hotel between the hours of 9:00 p.m. and 7:00 a.m. on weekdays and between 6:00 p.m. and 7:00 a.m. on weekends, on two days after receiving a complaint and warning to stop the noisy activity, except in situations involving the interests of public safety, official government business, or the protection of the subject property; that is, such construction noise that can be completed in one day shall not be a violation of this section. This subsection shall not apply to construction noise from construction activities that are determined by the City to be necessary in order for the installation of or performance of structures, improvements, systems or subsystems to meet the best practices of building construction. In order to obtain this exception, a person preparing to perform construction activities must submit a written application to the City Development Services Engineer or designee, demonstrating that the proposed activity would be necessary to meet the best practices of building construction. This exception shall only apply upon the Development Services Engineer's or designee's prior written approval by permit. Granting the exception shall be within the sole discretion of the Development Services Engineer or designee, who may consider one or more of the following factors:

- (a) Whether the proposed time or nature of the work is necessary to ensure the public health and safety;

- (b) The proposed length or duration of the proposed construction;

- (c) The specific methods of construction being utilized;

- (d) The possible effect of weather, temperature, light or other factors on the workers, the proposed construction, or on the equipment or materials used in the activity;

(e) Any other factors determined to be relevant by the Development Services Engineer or designee;

Within five (5) days after granting any permit allowing an exception under this subsection, the Development Services Engineer or designee shall send notice to all owners of real property situated within two hundred feet (200') of the property for which the exception has been granted.

5. The creation of any noise in a public place adjacent to a church, school, cemetery, court of law, or other public building which, by its nature, is reasonably calculated to disrupt, interfere with, or disturb the proceedings conducted therein;

6. The outdoor use of a drum, musical instrument, mechanical loud speaker, or other sound amplification device for the purpose of attracting attention by the creation of noise to any performance, show, sales event, or display of merchandise so as to attract customers to any place of business;

7. The outdoor use of a mechanical loudspeaker, calliope, mechanically operated piano, organ, musical instrument or other sound amplification or broadcasting equipment, whether stationary or mobile, emitting sound capable of being heard within one hundred (100) feet of a private home, apartment building, hotel, or other place of residence;

8. The demolition, repair, or alteration of a motor vehicle or part thereof in connection with which there is produced any noise which is offensive to inhabitants in the vicinity or which substantially impairs the use or enjoyment of adjacent property;

c. Exceptions. This section shall not apply to:

1. An official of Federal, State, or Local government or to members of the United States armed forces or the State engaged in the performance of official duties; or

2. Persons engaged in the present performance or rendition of emergency medical services;

3. Special events conducted in park or recreation areas pursuant to a special event permit authorized by the Parks Director;

4. Public parades duly permitted;

5. The use of outdoor sound amplification for outdoor public speeches, ceremonies, political assemblages or paging purposes conducted at a fixed location at least one hundred (100) feet from a residential district and the sound was not audible beyond the property line of the premises on which it was located;

6. The use of sound amplification, intercom, or paging devices within the interior of a church, school, auditorium, convention center, government building or similar public meeting place. (Ord. 0-98-27, 3/25/98) (Ord. No. 0-98-52, 6/24/98) (Ord. No. 0-2007-93; 7/25/07)

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 August 22, 2007.

PASSED AND APPROVED this 25th day of July, A. D., 2007.

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

ATTEST:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

CITY ATTORNEY