



## **ORDINANCE 2014-11**

AN ORDINANCE PROHIBITING ANY LOUD AND OR EXCESSIVE NOISE AS TO WHERE IT DISTURBS THE PEACE OF ANOTHER WITHIN THE TERRITORIAL CITY LIMITS OF TOM BEAN, GRAYSON COUNTY, TEXAS. AND PROVIDING FOR A PENALTY OF NOT LESS THAN ONE (1) AND NO/100 DOLLAR (\$1.00), NOR MORE THAN FIVE (5) HUNDRED AND NO/100 DOLLARS (\$500.00). PROVIDING FOR THE ARREST WITHOUT WARRANT OF PERSONS VIOLATING THE TERMS OF THIS ORDINANCE; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND REPEALING ORDINANCES NO. 121 AND 121 A, OF THE CITY OF TOM BEAN AND ALL OTHER ORDINANCES AND PARTS OF THE ORDINANCES IN CONFLICT THEREWITH.

Whereas: The City Council of the City of Tom Bean, Grayson County, Texas has investigated and determined that it would be advantageous and beneficial to the citizens of the City of Tom Bean, Grayson County, Texas to adopt this Ordinance regulating the enforcement of and loud and or excessive noise within the territorial city limits of Tom Bean.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOM BEAN, GRAYSON COUNTY, TEXAS:

**Section 1: Purpose and Intent;** it is the purpose of this Ordinance to put in place such regulations as necessary to;

- (a) Preserve, promote peace and temperance of the citizens of Tom Bean, Texas.
- (b) Control and eliminate noisy vehicles on private and public property.
- (c) Control and eliminate disturbances and annoyances, from all unreasonable noises on private and public property.

**Section 2: Definitions;** when used in this article, the following words and terms, unless the context indicates a different meaning, shall be interpreted as follows:

Daytime: the hours between 7:00 a.m. and 10:00 p.m.

Nighttime: the hours between 10:00 p.m. and 7:00 a.m.

Person: any individual, firm, business, entity, association, partnership joint venture, or corporation.

Emergency Situation: a situation in which one must take actions to prevent a traffic accident or to attempt to prevent a traffic accident.

Public Space: any real property of structure(s) on real property, owned or controlled by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

Impulsive Sound: sounds of short duration, usually less than one (1) second, with an abrupt onset and rapid decay. Exp. Discharge of firearms.

Emergency Work: any work or action immediately necessary to deliver essential service including, but not limited to, repairing water, gas, electric, telephone, sewer facilities, or public transportation facilities removing fallen trees on public right-of way, or abating life-threatening conditions.

Residential Area: any real property zones for residential use in accordance with the city's zoning ordinance, all other real property which has been platted for residential use on which a person resides, any real property in which the primary use is determined to be residential and the public right-of way abutting any such properties.

Sound Equipment: any loud speaker, public address system, amplification, musical instrument, radio, CD player, or other sound producing device.

Public Right-of-Way: any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public, which is owned or controlled by any government entity.

Noise-sensitive area: includes, but is not limited to, a posted area where a school, church, day care, court, public library, business where people gather and have a reasonable expectation of quiet, peace or solitude is located.

**Section 3: Exemptions;** none of the terms or prohibitions of this code shall apply to or be enforced against:

- (a) Any vehicle of the city, county or state while engaged upon necessary public business.
- (b) Any vehicle recognized under existing law as an emergency vehicle while serving its purpose in an actual emergency.
- (c) Excavations or repairs on bridges, streets or highways by or on behalf of the city, county or state during the night when public welfare and convenience renders it impossible to perform such work during daylight hours.

- (d) School events and practices in a stadium, ballpark, or on public or private school grounds, which are conducted in accordance with the manner in which such spaces are general used, including, but not limited to school athletic events.
- (e) Noise made by a horn or other warning device required by state law.
- (f) Sound produced by permitted parades and events sponsored and held by the city on public property for the general public and pyrotechnic displays approved by the city fire prevention Marshall.
- (g) A person operating a bell for a religious activity.

#### **Section 4: Disturbance of Peace Prohibited;**

- (a) Prohibited noises. In addition to the other noise restrictions provided in this chapter, no person shall make, cause, suffer, allow, or permit any unnecessary or unreasonably loud noises in such a manner, or with such volume, intensity, or duration, so as to either annoy, cause discomfort, or disturb the peace of a person with average and normal hearing. A decibel level measurement shall not be required for the enforcement of this section:
  - (1) Loudspeakers and amplifiers: The maintenance or operation of any loudspeaker or amplifying device on the outside of any building or structure in the city whereby music, speaking or noises of any type are or may be transmitted outside the confines of a fully enclosed stone or wood structure is prohibited; provided, however, that the city may, on being shown to satisfaction that the operation thereof will not create an undue disturbance, grant a temporary permit to persons desiring to use loudspeakers or other electrical devices for parades or for religious, social or political gatherings to be held in any park or other suitable place of assembly; and further provided that between the hours of 8:00 a.m. and 9:00 p.m. the reasonable use of amplifiers as an integral part of a system or set of chimes or carillon or the ringing of bells to call the people to religious worship by any of the duly constituted, organized and recognized churches of the city, or the use of any public address systems or amplifiers in any ballpark or stadium while an athletic contest is in progress therein, shall not be deemed a violation of this section.
  - (2) Playing of radios, television sets, etc.: The playing of any radio, boom box, television set, phonograph or any musical instrument in such a manner, or with such volume, particularly during the hours between 10:00 p.m. and 7:00 a.m., as to annoy or disturb the quiet, comfort or repose of persons in any office or school or in any dwelling, hotel or other type of residence, or of any person in the vicinity, is hereby prohibited.
  - (3) Yelling, shouting, etc., on streets: Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 10:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or disturb the quiet, comfort or repose of any persons in any school, dwelling, hotel or any other type of residence or of any persons in the vicinity is hereby prohibited.
  - (4) Noisy animals and fowl: The keeping of any animal, dog, bird or fowl which, by causing frequent or long continued noise, shall disturb the comfort or repose of persons in the vicinity is hereby prohibited.

- (5) *Building and excavating operations*: The erection (including excavation), demolition, alteration or repair of any building in any residential district or section, and the excavation of streets and highways in any residential district or section, other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, is hereby prohibited, except in case of urgent necessity in the interest of public health and safety and then only with a permit from the city, which permit may be granted for a period not to exceed thirty (30) days while the emergency continues. If the mayor/city manager should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways within the hours of 6:00 p.m. and 7:00 a.m., and if he/she shall further determine that loss or inconvenience would result to any party in interest, he/she may grant permission for such work to be done within the hours of 6:00 p.m. and 7:00 a.m. upon application being made at the time the permit for the work is awarded or during progress of the work.
- (6) *Excessive noise near schools, courts, or churches*: The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same is in session, which unreasonably interferes with the working or sessions thereof, is hereby prohibited.
- (7) *Use of noise to attract attention to shows, sales, etc.*: The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, sale or display of merchandise is hereby declared to be unlawful.

(b) *Noise producing vibrations from vehicles*. In addition to the other noise restrictions provided in this chapter, no person shall make, cause, suffer, allow, or permit any unnecessary or unreasonably loud noises in such a manner, or with such volume, intensity, or duration, so as to either annoy, cause discomfort, or disturb the peace of a person with average and normal hearing; from a motor vehicle in a manner which emits sound audible on a public right-of-way, street, or highway, to the human ear of a person with average and normal hearing, at a distance of thirty (30) or more feet from the motor vehicle causes a person at that distance to be aware of a vibration accompanying the sound. It shall be presumed that the driver of any such vehicle is the operator of the sound-making device(s). The use of any automobile, motorcycle, or such vehicle so out of repair, so loaded or in such manner as to create loud an unnecessary grating, grinding, rattling or other noise hereby prohibited. A decibel level measurement shall not be required for the enforcement of this section.

- (1) *Mufflers for engines*: It shall be unlawful to discharge into the open air the exhaust of any stationary internal-combustion engine, motor vehicle or motorboat engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (2) *Noisy vehicles generally*: The use of any automobile, motorcycle, or other vehicle so out of repair, so loaded, or in such a manner as to cause loud and unnecessary grating, grinding, rattling or other noise is hereby declared to be unlawful.

- (3) Loading or unloading of vehicle; Opening or destruction of bales, boxes, etc.: The creation of a loud and excessive noise in connection with the loading or unloading of any vehicle or the opening and destruction of bales, boxes, crates and containers is hereby prohibited.
- (4) Sounding of vehicle horn or signal: The sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle while not in motion, except as a danger signal if another vehicle is approaching, apparently out of control, or if in motion, as a warning signal only; or the creation by means of any such signal device of any unreasonably loud or harsh sounds, and the sounding of such device for an unnecessary and unreasonable period of time, is hereby prohibited.
- (5) Parking of refrigerated-type trucks and/or trailers:
- (A) It shall be unlawful for the owner or person in control of any refrigerated-type truck and/or trailer to allow the same to be parked for a period of time in excess of two (2) hours within a distance of two hundred (200) feet from a residential structure.
- (B) It shall, further, be unlawful for the owner or person in control of any motel, truck stop or similar commercial activity to authorize, permit, or acquiesce to the parking of refrigerated-type trucks and/or trailers in violation of subsection (a) above.

(c) Included noises. This section is intended to apply to, but is not limited to, unnecessary and unreasonable loud noises in the form of: musical instruments, or other machines or devices for the producing, reproduce or amplification of sounds in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time within louder volume than is necessary for convenient hearing for persons who are in the room, vehicle, chamber, or location in which such machine or device is operated and who are voluntary listeners thereto, is hereby prohibited. The operation of such set, instrument, phonograph, stereo, machine or device, in such a manner as to be plainly audible at a distance of thirty feet (30') from any building, structure, vehicle, or location in which it is situated shall be prima facie evidence of a violation of this section. Along with, the cries of peddlers, hawkers and vendors; any noise during nighttime in a residential or noise-sensitive area which can be heard beyond the real property line of the premises from which the noise is originating; and noise shooting of a gun or fireworks, including such noise created at sports shooting ranges as defined in § 250.001 of the Texas Local Government Code, where said noise is audible in residential or noise-sensitive areas.

### **Section 5: Enforcement;**

- (a) The Tom Bean Police Department will have primary responsibility for the enforcement of the noise regulations contained herein. Nothing in this article shall prevent the police department from having the authority to obtain voluntary compliance by way of warning, notice or education.

- (b) If a person's conduct would otherwise violate this article and consists of speech or communication delivered to others who have gathered to hear or observe speech or communication: or to others who have gathered to picket or otherwise express in a nonviolent manner a position on social, economic, political or religious questions; the person who is in violation of this article shall be ordered to, and have the opportunity to, move, disperse, or otherwise remedy the violation, prior to arrest or a citation being issued.
- (c) Violation of any provision of this chapter shall be cause for a citation to be issued by the police department. In the event the noise violating this chapter is not stopped following issuance of a citation, police department may issue an administrative stop order to any person having possession or control over noise generating property to immediately halt the making of any sound.
- (d) In the event a noise violation continues after the delivery of an administrative stop order, the police department may apply to any judge for an administrative search warrant for the purpose of entering private property to investigate and identify noise nuisance producing devices which are violating this article and their owners, and to temporarily seize the devices in the event the owner of the offending noise producing device has been convicted of a violation of this article in the previous year. Any noise producing devices seized under this section shall be returned to any person requesting their return and presenting proof of ownership following twenty-four (24) hours after the seizure of the devices. Any disputed ownership of the seized property shall be resolved at a hearing before a judge of the city. Nothing herein shall prevent the city from exercising any other rights or remedies under this article or by laws.
- (e) Any person who violates any provision of this code shall be deem guilty of a class C misdemeanor and upon conviction, shall be punishable by fines and fees in accordance with section six (6) of this ordinance.

**Section 6: Penalty of Violation(s);**

(1<sup>st</sup> Violation) Any person who violates any provisions or part of these rules or does not comply with the requirements of these regulations shall be guilty of a Class C Misdemeanor and shall be fined no less than Fifty and no/100 (\$50.00) dollars, court cost fees, and restitution fees in accordance with the general penalty per violation; each day of violation constitutes a separate offense.

(2<sup>nd</sup> Violation) Any person who violates any provisions or part of these rules or does not comply with the requirements of these regulations shall be guilty of a Class C Misdemeanor and shall be fined no less than One Hundred and no/100 (\$100.00) dollars, court cost fees, and restitution fees in accordance with the general penalty per violation; each day of violation constitutes a separate offense.

(3<sup>rd</sup> Violation) Any person who violates any provisions or part of these rules or does not comply with the requirements of these regulations shall be guilty of a Class C Misdemeanor and shall be fined no less than Two Hundred and no/100 (\$200.00) dollars, court cost fees, and restitution fees in accordance with the general penalty per violation; each day of violation constitutes a separate offense.

It is the intention of the city council of Tom Bean, that each separate provision in this ordinance shall be deemed independent of all other provisions herein and it is further the intention of the city council that, if any provisions of this article are declared invalid or unconstitutional, all other provisions thereof shall remain valid, enforceable and constitutional.

**Section 7: Right to Appeal;**

A person, who has received a violation under any section of the said ordinance, has the right to appeal and request a hearing before the judge of the Tom Bean Municipal Court. Request for a hearing must be in writing and received by the court in no less than ten (10) business days after the date violation(s) were issued. The court will then notify the defendant within two (2) weeks prior to hearing with the appearance date, time and any other instructions. If defendant fails to appear at their requested hearing, the court will issue a violation of promise to appear violation.

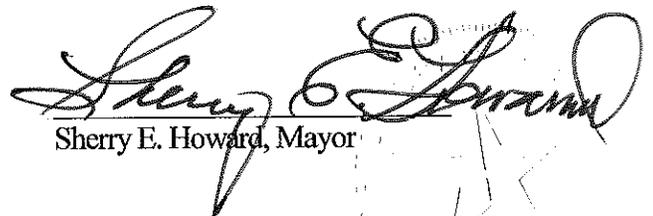
**Section 8: Repeal of Conflicting Ordinances;**

All existing ordinances of the City of Tom Bean, Grayson County, Texas are hereby repealed insofar as they may be inconsistent with the provisions of this ordinance.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF TOM BEAN, TEXAS THIS 13 DAY OF October, 2014.**

Attest:

  
Cathy Pugh, City Secretary

  
Sherry E. Howard, Mayor