

ORDINANCE NO. 2021-04-940

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

AN ORDINANCE AMENDING CHAPTER 91.01: LOUD NOISE PROHIBITED OF THE TONTITOWN MUNICIPAL CODE IN ITS ENTIRETY IN ORDER TO REVISE NOISE REGULATIONS FOR THE CITY OF TONTITOWN AND DECLARING AN EMERGENCY.

WHEREAS, on or about June 3, 2008, the City Council of Tontitown adopted Ordinance No. 2008-06-312 to provide noise regulations within the city and said Ordinance No. 2008-06-312, as it has been amended from time to time, was thereafter codified within in Chapter 91.01: LOUD NOISE PROHIBITED in the Tontitown Municipal Code; and

WHEREAS, the City Council of the City of Tontitown now finds it to be in the best interest of the citizens of the City of Tontitown to amend Chapter 91.01: LOUD NOISE PROHIBITED in its entirety to better provide for the clarification of noise regulations; and

WHEREAS, having fully reviewed the proposed amendments, the Tontitown City Council has determined that Chapter 91.01: LOUD NOISE PROHIBITED of the Tontitown Municipal Code should be revised and restated as incorporated herein below.

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the City Council of the City of Tontitown, as follows:

Section 1. That Chapter 91.01: LOUD NOISE PROHIBITED, of the Tontitown Municipal Code is hereby revised in its entirety and is attached hereto as Exhibit "A".

Section 2. In the event that any section, paragraph, subdivision, clause, phrase, or other provision or portion of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional, and the remaining provisions of this Ordinance shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein.

Section 3. Declaration of Emergency. It is hereby found and determined that Chapter 91.01: LOUD NOISE PROHIBITED, of the Tontitown Municipal Code should be immediately amended in order to provide clarification of terms for noise regulations within the City of Tontitown. Therefore, an emergency is declared to exist, and this act, being immediately necessary for the preservation and protection of the public peace, health, safety and welfare of the City and its citizens, shall become effective on the date of its passage and approval by the Mayor. If the Ordinance is neither approved nor vetoed by the Mayor, it shall become effective on the expiration of the period of time during which the Mayor may veto this Ordinance. If the Ordinance is vetoed by the Mayor and the veto is overridden by the City Council, it shall become effective on the date the City Council overrides the veto.

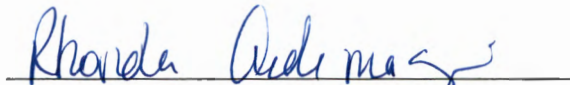
PASSED AND APPROVED this 6th day of April, 2021.

APPROVED:



Paul Colvin, Jr., Mayor

ATTEST:



Rhonda Ardemagni, City Clerk-Treasurer

§ 91.01 LOUD NOISE PROHIBITED.

(A) It shall be unlawful for any person or persons to willfully make, continue, or cause to be made or continued, any unreasonably loud and disturbing noise of such character, intensity or duration as to be detrimental to the life, health, ~~or safety~~ or welfare of an individual, or such noise that constitutes a disturbance of the peace.

(B) The use of an amplification device, ~~radio,~~ television, speaker, drum, musical instrument or similar device that produces, reproduces or amplifies sound shall be deemed a loud and disturbing noise if the sound is produced between the hours of 12:00 a.m. (midnight) until 7:00 a.m. for commercially zoned properties and for every other zoning district between the hours of 10:00 p.m. and 7:00 a.m., and is plainly audible a distance of 150 feet or more from any boundary of the property (or in the case of a vehicle related business, from the vehicle itself) upon which the source of the sound is located.

(C) Night Construction Noise. Construction noise from private development construction activity, including but not limited to the use of excavators, bulldozers, backhoes, dump trucks, nail guns and powered equipment, shall be deemed annoying or disturbing to a person, reasonably calculated to disturb the peace and unreasonably offensive and injurious to the public if the sound or noise is produced later than 10:00 p.m. everyday and prior to 6:00 a.m. on all days except Sundays when the "quiet" time shall extend until 9:00 a.m. and such noise plainly audible at or near any residence or apartment within 150 feet should this be feet? of the construction activity.

(1) Emergency Work or construction activity consisting of emergency work in this chapter shall be permitted if conditions necessitating the emergency work were not foreseeable in advance and if authorized in advance or ratified upon the first available business day by the Mayor or the Mayor's designee if there is not reasonable time to receive authorization in advance.

(2) Emergency Work in this chapter shall mean any work performed for the purpose of preventing or alleviating the physical harm to a person, property damage threatened or caused by an unforeseeable emergency, or the threat of damage to or inhibiting of construction due to imminent and serious weather conditions that could lead to imminent danger of physical harm or trauma to a person or to property. Emergency work that is exempt from the night construction noise limitations of this provision shall not be allowed on the basis of typical seasonal weather events or in foreseeable situations where weather events have caused construction delays. Do we want the weather conditions language? It seems like it could open the door to anytime it is supposed to rain, etc.

(D—(1) PLAINLY AUDIBLE—Plainly audible in this chapter shall means any sound produced as set forth above which clearly can be heard from inside a dwelling or place of business with the doors and windows closed at a distance of 150 or more feet from any boundary of the property upon which the source of the sound is located. The measurement standard shall be by the auditory senses, based on direct line of

sight. Words or phrases need not be discernible to be plainly audible, but bass reverberations shall be included.

~~—(2) This ordinance shall not apply to sanctioned athletic events or school-related or public events, including the annual Tontitown Grape Festival.~~

~~(Ord. 182, passed 7-6-04; Am. Ord. 2007-08-297, passed 8-7-07; Am. Ord. 2008-06-312, passed 6-3-08)~~

§ 91.02 ACTS DEEMED PUBLIC NUISANCES.

The following acts, subject to any exceptions as set forth below, are declared to be public nuisances, and therefore, in violation of this chapter:

(A) *Engine exhaust.* The discharge into the open air of the exhaust of any steam engine or stationary internal combustion engine except through a muffler or other device which will effectively prevent loud and raucous noises therefrom;

(B) ~~*Pile drivers, steam shovels, etc.*~~ The operation of any pile driver, steam shovel, pneumatic hammer, derrick, dredge, pump, steam or electric hoist, or other such appliance, including but not limited to the usage or employment of tailgate banging by dump trucks and other large vehicles, the use of which is attended by loud and raucous noise;

(C) ~~*Blowers, fans, etc.*~~—The operation of any blower or power fan or any internal combustion engine, the operation of which causes loud and raucous noise, unless the noise from such blower or fan is muffled, or such engine is equipped with a muffler device sufficient to prevent loud and raucous noise;

(D) ~~*Defect in vehicle or load.*~~ The use or operation of any motor vehicle by rapidly advancing its throttle or reviving its engine or if such vehicle is so out of repair, so loaded, or loaded with, or in such a manner as to create loud grating, grinding, rattling, or other loud, or which is not equipped with a muffler or sound dissipative device in good working order and in constant operation so as to prevent loud noise which could be distracting to other motor vehicle drivers or persons in the vicinity;

~~—(E) *Building construction or repair.* The erection, including excavating, demolition, alteration, or repair of any building so as to create a loud noise other daylight hours any day of the week except in cases of urgent necessity in the interest of public health and safety, and then only with a permit from the City Code Enforcement Officer which permit may be granted while the emergency continues. If the City Code Enforcement Officer should determine that the public health and safety necessitates the issuance of such a permit and will not be impaired by the erection, demolition, alteration, or repair of any building or the excavation 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. on any day of the week, he or she may grant permission for such work to be done within such hours or within a shorter time period during such hours, upon application being made at the time the permit for the work is issued or during the progress of the work;~~

(~~EF~~) ~~Jacob brakes.~~—The creation or emission of engine exhaust noise through the use of ~~Jacob brakes~~ a compression release engine brake or other similar engine compression retarding devices so as to create a loud or raucous noise, except when such devices are used as a safety device only. Fire trucks and other public safety and municipal vehicles shall be permitted to use ~~Jacob—compression release engine~~ brakes or engine compression retarding devices.;

~~(Ord. 182, passed 7-6-04)~~

§ 91.03 EXCEPTIONS AND TEMPORARY PERMITS.

(A) Exceptions. This Ordinance shall not apply to city sanctioned events, sanctioned athletic events or school-related or public events, including the annual Tontitown Grape Festival or sanctioned or permitted events occurring in city parks. This ordinance shall also not apply to the following:

(1) Sound which is emitted for the purposes of alerting persons to the existence of an emergency;

(2) Sounds from a fire, burglar, home or business security, civil defense alarm or siren or similar signaling devise.

(3) Sounds permitted by applicable federal or state law, or as specifically allowed in the Tontitown Municipal Code.

~~—The Tontitown Grape Festival, or any gatherings, parades, rides, exhibits, or other activities associated with such, and other public gatherings, parades, events and exhibitions sanctioned by the City of Tontitown;~~

~~—(B) Fireworks displays within such hours and conditions as may be imposed by the issuance of the permit, or the discharging of fireworks as allowed by ordinances of the city.~~

(4)

(5) ~~(C)~~ Any "agricultural operation" or "farming operation" as defined by A.C. Ark. Code Ann. § 2-4-102.

(B) Temporary Permit. The Mayor ~~or his/her designee~~ or the Mayor's designee shall have the authority to issue a permit, upon a showing of undue hardship, for a waiver from the provisions of this section upon a showing by the applicant that:

(1) Additional time is necessary for the applicant to alter or modify his activity or operations to comply with this section; or

(2) The activity, operation or noise source will be of a temporary duration and cannot be done in a manner that would comply with this section; and

(3) No reasonable alternative is available to the applicant and that good cause exists.

An application for a temporary permit shall be in writing on a form prescribed by the Mayor or the Mayor's designee. In issuing a temporary permit, the Mayor or the Mayor's designee may impose reasonable conditions or requirements necessary to minimize

adverse effects upon the surrounding neighborhood. For events to be attended by the public, the written application for a permit shall be filed with the Mayor or the Mayor's designee a minimum of fourteen (14) days prior to the date on which a temporary permit is requested. For construction related work, the written application for a permit shall be filed with the Mayor or the Mayor's designee a minimum of seven (7) days prior to the date on which a temporary permit is requested.

(C) Temporary Permit Denial; Appeal. An applicant who is denied a permit by the Mayor or the Mayor's designee may appeal to the Tontitown City Council by filing written notice of appeal with the City Clerk within ten (10) days from the date of the decision of the Mayor's or the Mayor's designee. The notice of appeal shall specifically state the reasons why the applicant considers the denial or the conditions required to be in error and shall be heard at the next available meeting of the Tontitown City Council upon the filing of the written notice.

~~(Ord. 182, passed 7-6-04; Am. Ord. 2007-08-297, passed 8-7-07)~~

§ 91.04 VIOLATIONS.

—Pursuant to A.C. Ark. Code. Ann § 14-54-1045(4)(D), the city may prevent, abate, or remove nuisances and punish by fine or imprisonment, or both, any persons or persons found to be in violation of this chapter. Further, any person, owner, agent, or supervisor in charge of operating, ordering, directing, or allowing the operation or activity creating noise as prohibited in this chapter shall be deemed guilty of a violation of this chapter and subject to the penalties set forth in § 10.99 of this code.

~~(Ord. 182, passed 7-6-04) Penalty, see § 10.99~~