

ORDINANCE NO. 884-23

AN ORDINANCE OF THE CITY OF WILLOW PARK, TEXAS REPEALING AND RESCINDING THE PREVIOUS NOISE ORDINANCE CONTAINED IN CHAPTER 8 “OFFENSES AND NUISANCES”, ARTICLE 8.03 “NOISE” AND AMENDING THE CODE OF ORDINANCES OF THE CITY OF WILLOW PARK, TEXAS, CHAPTER 8 “OFFENSES AND NUISANCES,” BY ADOPTING A NEW ARTICLE 8.03, “NOISE”; PROVIDING DEFINITIONS; PROVIDING APPLICABILITY; PROVIDING OFFENSES; PROVIDING FOR THE AUTHORIZATION OF TEMPORARY NOISE PERMITS; PROVIDING FOR APPEAL OF THE DENIAL OF A TEMPORARY NOISE PERMIT; PROVIDING FOR A PENALTY NOT TO EXCEED \$500 FOR VIOLATIONS AND THAT EACH DAY DURING OR ON WHICH A VIOLATION OCCURS SHALL BE DEEMED A SEPARATE OFFENSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CUMULATIVE REPEALER CLAUSE; PROVIDING FOR PUBLICATION; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Willow Park (“City”), located in Parker County, Texas, is a Type A, general law municipality authorized under Texas state law to legislate in the best interests of its residents; and

WHEREAS, Section 51.001 of the Texas Local Government Code provides, in part, that the City “may adopt . . . an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality . . . and is necessary or proper for carrying out a power granted by law to the municipality”; and

WHEREAS, Section 51.012 of the Texas Local Government Code provides, in part, that a municipality may adopt an ordinance “that is necessary for the government, interest, welfare, or good order of the municipality as a body politic”; and

WHEREAS, the City Council of the City of Willow Park, Texas (“City Council”), finds and has determined that unlawful noise disturbances pose a threat to the health, safety, and welfare of the City’s inhabitants and the well-being, quality of life, and tranquility of the community; and

WHEREAS, the City Council finds that the City’s current noise ordinance difficult to enforce and desires to simplify the enforcement of unlawful noise disturbances by adopting this amended noise ordinance to promote the health, safety, and welfare of the City’s inhabitants and the well-being, quality of life, and tranquility of the community; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WILLOW PARK, TEXAS, THAT:

SECTION 1. All of the above premises are found to be true and correct legislative determinations of the City Council and they are hereby incorporated into the body of this Ordinance as if copied and set forth herein in their entirety.

SECTION 2. The Code of Ordinances of the City of Willow Park, Texas, Chapter 8: “Offenses and Nuisances,” Article 8.03 “Noise,” is hereby repealed and rescinded in its entirety and a new Article 8.03 “Noise” is adopted to read in its entirety from the date of passage as follows:

“Article 8.03

NOISE

§8.03.001. Purpose. This article is adopted to prevent unlawful noise disturbances to protect the general health, safety, and welfare of the City’s inhabitants and it is also intended to safeguard the well-being, quality of life, and tranquility of the community.

§8.03.002. Definitions.

The following words, terms and phrases, when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Accountable official* means the City officer or employee designated by the city administrator with a particular administrative or enforcement responsibility under this article.
- (2) *Decibel(s)* means sound pressure level as measured by a sound level meter using the “A” weighting network and either the slow or fast meter response as specified by the American National Standards Institute.
- (3) *Noise* means sound which: a. is louder than is permitted under this article; or b. disturbs a reasonable person of normal sensibilities as provided herein.
- (4) *Person* means any individual, firm, association, partnership, corporation, or any other entity, public or private.
- (5) *Property line* means an imaginary line at the ground surface and its vertical extension, which separates the real property owned by one person from that owned by another person.
- (6) *Quiet zone* means property on which a school, hospital, clinic, library or other designated noise disturbance sensitive facility is located.
- (7) *Residential* or *residence* means property zoned for residential use in accordance with the City’s zoning ordinance.
- (8) *Sound equipment* means a loudspeaker, public address system, amplification system, or other sound producing device.
- (9) *Temporary noise permit* or *permit* shall mean a permit approved by the accountable official, allowing noise levels to exceed the permissible sound levels of this article on a temporary

basis. Temporary noise permits are issued in accordance with the process and procedures identified in Section 8.03.005.

§8.03.003. Applicability.

- A. This article does not apply to:
 - 1. An employee of a governmental entity engaged in the employee's official duty;
 - 2. A person at a stadium or ball-park during a sports event;
 - 3. A person at an authorized parade or street event;
 - 4. A person operating a bell for a religious activity; or
 - 5. A person operating an emergency vehicle.
- B. This article does not apply to a person issued a temporary noise permit as provided in Section 8.03.005.

§8.03.004. Offenses.

- A. Noise Disturbance. A person commits an unlawful noise disturbance in violation of this article, if the person makes, causes to be made, or allows any noise:
 - 1. Such that it is a nuisance that annoys, distresses, or disturbs the quiet, comfort, or repose of any reasonable person with ordinary sensibilities; or
 - 2. Which exceeds the maximum permissible decibel levels identified in Section 8.03.004.C; or
 - 3. Which violates the other noise offenses identified in Section 8.03.004.D.
- B. In determining whether a person commits an unlawful noise disturbance in violation of Section 8.03.004.1., the following factors shall be considered by the accountable official:
 - 1. the level of the noise at any location at or beyond the property line of the property on which the noise is being generated;
 - 2. whether the nature of the noise is usual or unusual;
 - 3. the proximity to residential properties or a quiet zone;
 - 4. whether the noise is recurrent, intermittent, or constant;
 - 5. the time of day or night the noise occurs;
 - 6. whether the noise has been enhanced in volume or range by any type of electronic or mechanical means; and
 - 7. whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.
- C. Restriction on Decibel Levels

1. A person may not operate sound equipment or conduct an activity at a business that produces sound audible:
 - (a) In excess of 85 decibels between 8:00 a.m. and 9:00 p.m., as measured at the property line of the business where the sound is being generated; or
 - (b) In excess of 70 decibels between 9:00 p.m. and 8:00 a.m., as measured at the property line of the business where the sound is being generated.
2. A person may not operate sound equipment or conduct an activity in a residential area that produces sound audible:
 - (a) In excess of 60 decibels between 9:00 p.m. and 8:00 a.m., as measured at the property line where the sound is being generated; or
 - (b) In excess of 70 decibels between 8:00 a.m. and 9:00 p.m., as measured at the property line where the sound is being generated.
3. A person may not operate sound equipment or conduct an activity within 300 feet of a quiet zone that produces sound audible:
 - (a) In excess of 60 decibels between 9:00 p.m. and 8:00 a.m., as measured at the property line of the property where the sound is being generated; or
 - (b) In excess of 70 decibels between 8:00 a.m. and 9:00 p.m., as measured at the property line of the property where the sound is being generated.

D. Other Noise Offenses

1. A person may not:
 - (a) Operate a machine that separates, gathers, grades, loads, or unloads sand, rock or gravel within 300 feet of an occupied residence, motel, hotel, or quiet zone between 7:00 p.m. and 6:00 a.m., except for the installation of concrete as authorized under separate permit;
 - (b) Use or authorize or allow the use of a vehicle, equipment, attachment, or device associated with a vehicle, for cold hold, refrigeration, or freezing of any consumable food or beverage product, including water in any form such as consumer ice or ice used to refrigerate food or beverage, between 7 p.m. and 6 a.m. if noise or sound originating from the vehicle or any associated equipment (such as an engine or generator, equipment, attachment, trailer or device) is audible or causes vibration at a residence;
 - (c) Operate sound equipment in a vehicle that is audible or causes a vibration 50 feet from the equipment;
 - (d) Perform construction work within 300 feet of an occupied residence involving the erection, excavation, demolition, alteration, or repair of any building, structure, or flatwork before 7:00 a.m. or after 8:00 p.m. is prohibited as follows:

Before 7:00 a.m. or after 8:00 p.m. on Monday thru Friday;

Before 9:00 a.m. or after 8:00 p.m. on Saturday and Sunday.

§8.03.005. Temporary noise permits authorized; application; issuance

- A. Permits Authorized. The city administrator, or designee, is authorized to grant temporary noise permits for:
1. Events, concerts, or sound occurrences that are anticipated to exceed the sound levels herein if:
 - a. The event or occurrence happens infrequently, not exceeding six times a year in the city;
 - b. The sound levels permitted are not medically or physically harmful to anyone exposed to the sound;
 - c. Reasonable measures are taken by the permittee to mitigate impact on the geographic areas where there will be noise dB(A) exceedance; and
 - d. A specific procedure is adopted and implemented by the permittee to respond to noise complaints or sound levels that exceed permit levels.
 2. Relief of any provision in this article on the basis of undue hardship in cases where:
 - a. The sound source will be of short duration and the activity cannot be conducted in a manner as to comply with this article; and
 - b. No reasonable alternative is available to the applicant.
- B. Application; contents.
1. The application for a temporary noise permit shall be submitted to the accountable official, and contain the following information:
 - a. The date of the application and the date and hours for which the permit is requested.
 - b. The name and address of the applicant.
 - c. The name, address and mobile telephone number of the person who will have charge of the sound-amplifying equipment and who will be responsible for sound complaints while the sound event is occurring.
 - d. The address and a description of the location where the sound equipment will be used.
 - e. A description of the type of sound-amplifying equipment to be used.
 - f. A statement of the maximum noise level and/or the exception requested.
 2. All approved permits shall specify the date, hours, and location the permit is valid; the maximum sound level permitted; a description of the equipment that may be used under the permit; and any other details necessary.
- C. Events organized by political subdivisions. An automatic variance will be granted without the payment of permits fees for the purpose of conducting parades or other events organized by a political subdivision; provided that any noise disturbance created by such activity will be abated when such request is made by the city administrator, or designee.

- D. Authority of accountable official. The accountable official may prescribe any reasonable condition or requirements deemed necessary to minimize adverse effects of the sound event and may immediately suspend any permit issued for violating any provision or terms prescribed in the permit or variance.
- E. Permit fee. A fee in the amount established by the city council shall be charged to each applicant for processing permit applications.

§8.03.006 Appeal of denial or suspension of temporary noise permit.

- A. Any applicant who has been denied a permit or variance, or any permittee whose permit has been suspended, shall have the right to a hearing before the city council.
- B. Requests for a hearing shall be made in writing and filed with the city administrator within ten (10) days of the date of the denial or the date of the notice of the suspension. The city administrator may review the appeal at a staff level. If the city administrator upholds the denial or suspension of a permit, the applicant may request a hearing before the city council with thirty (30) days of the city administrator's finding.
- C. The city council shall have the authority to review all pertinent files and information regarding the applicant/permittee which are in the custody of the city. Additionally, the city council shall have the authority to accept written and verbal testimony from the city administrator, any appropriate city staff, the applicant/permittee and any interested citizens. The city council shall also have the authority to place time restrictions on the testimony to be given at the hearing.
- D. The city council shall have the authority to determine whether the city administrator acted properly and within the powers granted under this article in the denial or suspension of a permit. A majority vote of a quorum of the city council shall determine whether to uphold or reject the city administrator's action. Upholding the action of the city administrator shall affirm the denial or suspension. Rejection of the city administrator's or his/her designee's action shall automatically grant a permit or reinstate a suspended permit. The decision of the city council shall be final.
- E. No person whose permit has been denied or suspended shall create or allow the creation of the noise disturbance in dispute prior to final determination by the city council.

Sec. 8.03.007 Penalties.

- (a) Any person, firm, corporation, or other entity that violates any provision of this Ordinance shall be deemed guilty of a Class C misdemeanor and, upon conviction, shall be subject to a fine not to exceed Five Hundred Dollars (\$500.00) for each offense, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.
- (b) The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. If the City Council determines that a violation of this Ordinance creates a threat to the public safety, the City is authorized to bring suit in district court to enjoin the person, firm, corporation, or

other entity from engaging in the prohibited activity. The City is not required to give bond as a condition to the issuance of injunctive relief.”

SECTION 3. It is the intent of the City Council that each clause, phrase, sentence, paragraph, section, or subsection of this Ordinance be deemed severable, and should such clause, phrase, sentence, paragraph, section, or subsection be declared invalid or unconstitutional by a court of competent jurisdiction, such declaration in invalidity or unconstitutionality shall not be construed to affect or impair the validity of those provisions of this Ordinance left standing, or the validity of any other ordinance of the City of Willow Park.

SECTION 4. The City of Willow Park Code of Ordinances shall remain in full force and effect save and except as amended herein.

SECTION 5. This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Willow Park, and this Ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances area hereby repealed.

SECTION 6. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of Willow Park, and this Ordinance shall take effect and shall be in full force from and after the date of its final passage and publication as provided by law.

SECTION 7. This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law.

PASSED, APPROVED, and ADOPTED by the City Council of the City of Willow Park, Texas, on this the 12th day of September, 2023.

Doyle Moss, Mayor

ATTEST:

Crystal Dozier, City Secretary

APPROVED AS TO FORM:

William P. Chesser, City Attorney

The Willow Park City Council is acting on Ordinance No. 884-23, did on the 12th day of September vote as follows:

	<u>FOR</u>	<u>AGAINST</u>	<u>ABSTAIN</u>
Doyle Moss	_____	_____	_____
Eric Contreras, Place 1	_____	_____	_____
Chawn Gilliland, Place 2	_____	_____	_____
Greg Runnebaum, Place 3	_____	_____	_____
Lea Young, Place 4	_____	_____	_____
Nathan Crummel Place 5	_____	_____	_____