

ORDINANCE NO. 8-20D

AN ORDINANCE PROHIBITING THE USE OF AN ENGINE COMPRESSION BRAKE OR AN ALTERED MUFFLER IN THE CITY OF DEVINE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING THE VIOLATION OF SUCH ORDINANCE SHALL BE A MISDEMEANOR PUNISHABLE UPON CONVICTION BY A FINE OF NOT LESS THAN \$10.00 NOR MORE THAN \$500.00; AND PROVIDING WHEN THIS ORDINANCE SHALL BECOME EFFECTIVE.

WHEREAS: The City of Devine is a Type A city under the general laws of the State of Texas; and,

WHEREAS: Chapter 217 of the Texas Local Government Code authorizes Type A General Law cities to define, declare and abate nuisances; and,

WHEREAS: The City Council of the City of Devine has determined that the loud noises caused by the use of engine brakes and/or altered mufflers are disturbing to the general public and constitute a nuisance; and,

WHEREAS: The Texas Local Government Code, Section 51.001 authorizes the governing body of a municipality to adopt, publish, amend, or repeal an ordinance, rule, or police regulation that is for the good government, peace, or order of the municipality or for the trade and commerce of the municipality and is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality;

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

SECTION 1. Engine Brake.

A. For the purpose of this Ordinance, Engine Compression Brake means a vehicle retarding device that converts a power producing engine into a power absorbing air compressor in order to reduce motor vehicle speed without the use of the vehicle's foundation brakes.

B. A person commits an offense if he uses an engine compression brake to slow or stop a motor vehicle in the City.

SECTION 2. Altered Muffler. A person commits an offense if he discharges into the open air the exhaust from any motor vehicle, except through a muffler or other device which will effectively and efficiently prevent loud or unusual noises or annoying smoke.

SECTION 3. Defense. It is a defense to prosecution under this section that:

- (1) the motor vehicle was a fire apparatus owned or operated by a governmental entity; or
- (2) the engine compression brake was used in an emergency situation to prevent or reduce an imminent danger of death or bodily injury to a person or damage or destruction to property.

SECTION 4. Presumption. Whenever a violation of this Ordinance occurs, it is presumed that the registered owner of the vehicle for which the citation was issued is the person who committed the violation, either personally or through an agent or employee. Proof of ownership may be made by a computer-generated record of the registration of the vehicle with the Texas Department of Transportation (or the vehicle registration agency of any other state in which the vehicle is currently registered) showing the name of the person to whom state license plates were issued. This proof is prima facie evidence of the ownership of the vehicle by the person to whom the certificate of registration was issued.

SECTION 5. Penalty. Each violation of this Ordinance shall be punishable by a penalty of a fine of not less than \$10.00 nor more than \$500.00 for each offense.

SECTION 6. Code of Ordinances. It is the intention of the City Council that this Ordinance shall become a part of the Code of Ordinances of the City of Devine and may be renumbered and codified therein accordingly.

SECTION 7. Repeal. Any provision in the Code of Ordinances of the City of Devine that conflicts with this ordinance is hereby repealed.

SECTION 8. Effective Date. This ordinance shall take effect immediately upon its passage, approval and official publication as provided by law but shall not be enforced until the proper signs have been erected.

SECTION 9. Severability. If any section, provision, subdivision, clause or part of this ordinance shall be adjudged or held unconstitutional or invalid, it shall not affect the validity of this ordinance as a whole or any other part or provision contained herein.

PASSED, APPROVED AND ADOPTED at the Regular meeting of the Devine City Council held on the 18th day of August, 2020.


CORY THOMPSON, MAYOR

ATTEST:


DORA V. RODRIGUEZ, CITY SECRETARY

