

ORDINANCE NO. 422-2016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VENUS, TEXAS, ORDERING THE AMENDMENT OF CHAPTER 6 ANIMALS, SECTION 6-1 TO DELETE TWO DEFINITION PROVISIONS, THE AMENDMENT OF CHAPTER 6 ANIMALS TO ADD SECTION 6-14, ANIMAL NOISE, THE AMENDMENT OF CHAPTER 12 ENVIRONMENT, TO ADD ARTICLE IV, NOISE, CONFIRMING TEXAS OPEN MEETINGS ACT COMPLIANCE, PROVIDING A SEVERABILITY CLAUSE, PROVIDING A REPEALER CLAUSE, PROVIDING A PUBLICATION CLAUSE, PROVIDING AN EFFECTIVE DATE, AND PROVIDING A CERTIFICATION OF ADOPTION.

WHEREAS, the City of Venus, Texas (“City”), is a Type A general law city operating pursuant to the laws of the State of Texas, by and through its duly elected council members;

WHEREAS, the City is authorized and empowered to adopt and enforce ordinances, not inconsistent with state law, that are necessary to protect the welfare and safety of its inhabitants (TEXAS LOCAL GOVERNMENT CODE § 51.012);

WHEREAS, the City Council (“Council”) of the City serves as the elected governing body; directly responsible for the promotion and protection of the public health and safety of its citizens and inhabitants;

WHEREAS, a comprehensive review of the CITY OF VENUS CODE OF ORDINANCES found that no unified, clear, concise representation was given for noise or sound public nuisances;

WHEREAS, the Texas Legislature has given express authority for the City to adopt and enforce public noise nuisance regulations per TEXAS LOCAL GOVERNMENT CODE Sections 217.002 and 217.003; and

WHEREAS, the ordinances of the City are codified together in the CITY OF VENUS CODE OF ORDINANCES, hosted and managed by Municode.com as authorized and directed by TEXAS LOCAL GOVERNMENT CODE Section 53.001.

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

SECTION A. CHAPTER 6 DELETIONS

Chapter 6 – Animals, Section 6-1 of the CITY OF VENUS CODE OF ORDINANCES is hereby amended to delete provision (8) under the “Nuisance animal” definition and the entire definition for “Public” under the same section.

SECTION B. CHAPTER 6 AMENDMENT

Chapter 6 – Animals, of the CITY OF VENUS CODE OF ORDINANCES is hereby amended to add Section 6-14 Animal Noise as follows:

Section 6-14. – Animal Noise.

(a) A person commits an offense by owning, keeping, or harboring any animal or bird which, by causing frequent or long, continued noise, shall disturb the comfort of a reasonable person of ordinary sensibilities in the immediate vicinity.

(b) In order for a person other than a peace officer or animal control officer to file a formal complaint regarding an animal-related noise offense, that person must:

(1) In the presence of either an animal control officer or a clerk of the municipal court, complete and sign an official, notarized complaint, alleging that there has been a violation of this section and naming the alleged responsible party and file all necessary evidence (audio and/or video recordings, logs documenting the animal noise, photos etc.) with the municipal court; and

(2) Appear as a witness in the municipal court, if called or served with a subpoena, to testify as a witness on any date(s) as specified by the court.

SECTION C. CHAPTER 12 AMENDMENT

Chapter 12 – Environment, of the CITY OF VENUS CODE OF ORDINANCES is hereby amended to add Article VI. – Noise as follows:

Article IV. – Noise

Section 12-120. General Prohibition.

It shall be unlawful for any person to permit, allow, make, continue or cause to be made or continued any loud, unnecessary or unusual noise or sound or any noise or sound which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable and prudent person of ordinary sensibilities. Such an offense shall be deemed a public nuisance.

Section 12-121. Factors.

In determining whether a sound or noise is unlawful under Section 12-120, the following factors shall be considered:

(a) the time of day;

- (b) the proximity of the noise or sound to a residential structure, school, church, library, hospital, office or other location or premises necessitating quiet or calm enjoyment;
- (c) whether a person nearby the noise or sound is known to be sleeping;
- (d) whether the sound or noise is recurrent, habitual, intermittent or constant;
- (e) the volume and intensity of the sound or noise;
- (f) whether the noise or sound is subject to being controlled without unreasonable effort or expense by the creator thereof;
- (g) whether the creator of the noise or sound has a previous offense or complaint for a noise or sound nuisance;
- (h) if the noise, sound or vibration is emitting from a motor vehicle, whether the sound, noise or vibration may be heard twenty-five (25) feet or more away from the motor vehicle;
- (i) whether the noise or sound has been enhanced in volume or range by any type of electronic or mechanical means; and
- (j) the intensity and volume of the sound or noise.

Section 12-122. Defenses.

The following affirmative defenses shall apply to any charged offense filed under this Article if the sound or noise was:

- (a) caused by an authorized police, fire, ambulance or other emergency vehicle;
- (b) caused by an emergency alert siren or warning system operated by the city;
- (c) produced by the erection, excavation, construction or demolition of any building or structure, including the use of any necessary tools or equipment, conducted between the hours of 7:00 a.m. and 9:00 p.m.
- (d) produced by an aircraft in flight or in operation at an airport;
- (e) produced between the hours of 7:00 a.m. and 11:00 p.m. by activities conducted on public parks, public playgrounds and public or private school grounds, including, but not limited to, school athletic and school entertainment events;
- (f) produced as part of a religious observance or service during the hours of 7:00 a.m. and 9:00 p.m., provided the sound or noise did not cumulatively exceed five minutes duration in any one hour period; or
- (g) caused during an event for which a permit, issued by the city, allowed/authorized said noise or sound and was in strict compliance with said permit.

Section 12-123. Enforcement.

No warning or notice of violation is required before a criminal citation may be issued for an offense under this Article.

SECTION D. OPEN MEETINGS COMPLIANCE

That the meeting at which this Ordinance was approved was in all things conducted in strict compliance with the TEXAS OPEN MEETINGS ACT, TEXAS GOVERNMENT CODE, Chapter 551.

SECTION E. SEVERABILITY

Should any section, clause, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and/or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and/or phrases be declared unconstitutional or invalid.

SECTION F. REPEALER

All ordinances or parts of ordinances not consistent or conflicting with the provisions of this ordinance are hereby repealed; provided that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered in this ordinance. Any cause of action accruing prior to the passage of this ordinance shall continue as if this ordinance was not passed or any other ordinance had not been repealed.


SECTION G. PUBLICATION

The City Secretary is hereby directed, if required by law, to post or publish in the official newspaper of the City, the caption, publication clause and effective date clause of this ordinance in one issue of the official newspaper of the City, provided that the official newspaper is a weekly paper, in accordance with Section 52.011 of the TEXAS LOCAL GOVERNMENT CODE. The City Secretary is also hereby directed to incorporate the provisions of this Ordinance into the CITY OF VENUS CODE OF ORDINANCES by submitting it to www.municode.com for incorporation and online publication.

SECTION H. EFFECTIVE DATE

That this Ordinance shall become effective from and after its passage.

SECTION I. CERTIFICATION OF ADOPTION

APPROVED: 
MAYOR JAMES BURGESS


PASSED: MONDAY, FEBRUARY 8, 2016

ORDINANCE BECOMES EFFECTIVE: MONDAY, FEBRUARY 8, 2016

I, the undersigned, City Secretary do hereby certify that the above is a true and correct copy of an ordinance duly adopted by the City of Venus City Council at a regular meeting duly convened on Monday, February 8, 2016.

ATTEST:

APPROVED AS TO FORM:

Acting

CITY SECRETARY


CASS CALLAWAY, CITY ATTORNEY

