

ENGINE BRAKING ORDINANCE NO. 211

AN ORDINANCE OF THE CITY OF WHEELER, TEXAS, PROHIBITING ENGINE BRAKING AND PROVIDING FOR FINDINGS OF FACT, ENACTMENT PROVISIONS, REPEALER, SEVERABILITY, PUBLICATION, EFFECTIVE DATE, PUBLIC NOTICE AND MEETING, DEFINITIONS, PROHIBITION, AND ENFORCEMENT, INCLUDING CRIMINAL FINES NOT TO EXCEED \$500 PER OFFENSE.

WHEREAS, the City Council for the City of Wheeler, Texas ("City Council") seeks to protect the public safety, preserve the quality of life, and prevent nuisances in the City; and

WHEREAS, the City Council finds that the practice of engine braking by diesel trucks creates disturbing, excessive and offensive noise when it occurs within the city limits; and

WHEREAS, pursuant to TEX.LOC. GOV'T CODE Ch. 51, the City Council has the general authority to adopt and publish an ordinance or policy regulation that is for the good government, peace or order of the municipality and is necessary or proper for the carrying out of a power granted by law to the municipality; and

WHEREAS, the City Council finds this Ordinance to be reasonable and necessary.

NOW THEREFORE, be it ordained by the City Council of Wheeler, Texas :

I. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

II. ENACTMENT

The City of Wheeler Code of Ordinances shall be amended to add Section 10-37, "Engine Braking Ordinance."

Section 10-37. Engine Braking Ordinance

1.1 This Ordinance shall be commonly cited as the "Engine Braking Ordinance" and applies to all property within the incorporated municipal boundaries (i.e., "city limits") of the City of Wheeler, Wheeler County, Texas.

1.2 **Definition.** Engine Braking: any method of slowing diesel trucks in a manner that produces a loud noise, particularly by venting the cylinder of the diesel engine midway through its cycle causing the engine, instead of producing power, to absorb power, thereby slowing the truck down dramatically. It shall also include the production of excessive noise produced by engine retarders due to a truck operating with improperly maintained, defective, or modified muffler systems or the use of straight exhaust pipes with no mufflers.

1.3 **Prohibition.** It shall be unlawful for any person to engine brake within the city limits. No person shall engine brake within the city limits.

1.4 **Enforcement.**

1.4.1 **Penalties.** The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

1.4.2 **Criminal Prosecution.** Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00).

Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a Class C misdemeanor.

III. REPEALER

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

IV. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

V. PUBLICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the and among the records of the City.

VI. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication.


PASSED, APPROVED, and ORDERED published this 20 day of October, 2008 the City Council of the City of Wheeler, Texas.

CITY OF WHEELER, TEXAS



Mayor

ATTEST:



City Secretary