ORDINANCE NO. 19-11-14-40

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORINTH, TEXAS AMENDING CHAPTER 94 "NUISANCES", SECTION 94.36 "NOISE NUISANCES" OF TITLE IX, "GENERAL REGULATIONS" OF THE CITY OF CORINTH CODE OF ORDINANCES; PROVIDING CITY STAFF AUTHORITY TO APPROVE SPECIAL WAIVERS OF BUILDING AND CONSTRUCTION HOURS IN CASES OF URGENT NECESSITY IN THE INTEREST OF PUBLIC SAFETY, HEALTH AND WELFARE; PROVIDING FOR THE INCORPORATION OF PREMISES; PROVIDING FOR SEVERABILITY; PROVIDING FOR SAVINGS; PROVIDING A CUMULATIVE REPEALER; PROVIDING FOR A PENALTY IN THE AMOUNT NOT TO EXCEED $2,000 DOLLARS A DAY FOR VIOLATIONS; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Corinth, Texas ("City") is a home rule city operating pursuant to the laws of its Charter and of the State and Texas, by and through its duly elected City Council ("Council") members; and

WHEREAS, noise nuisances are detrimental to the community and disruptive to a person's ability to enjoy the peace and comfort of home and neighborhood; and

WHEREAS, the City has adopted Chapter 94, "Nuisances" identifying various types of noise creating activities as disruptive of the peace and enjoyment of residents and setting forth reasonable regulations for those activities designed to protect the public health, safety and welfare; and

WHEREAS, the City has determined it necessary to adopt an amendment to Chapter 94 to authorize designated staff members to review applications for a waiver of the restrictions placed upon hours during which building construction activities may occur and to provide specified criteria that staff members must utilize when reviewing applications for waivers; and

WHEREAS, the City Council has determined that it is in the best interest of the health, safety, and welfare of the citizens of Corinth, Texas that the City's noise ordinance be amended as set forth herein.

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

SECTION 1.
Incorporation of Premises

The above and foregoing recitals are found to be true and correct and are incorporated into the body of this Ordinance for all purposes.

SECTION 2.
Amendment

Subsection (B)(3), "Building" of Section 94-36 "Noise Nuisances" of Chapter 94, "Nuisances" of Title IX, "General Regulations" of the Code of Ordinances is hereby repealed and

a new Section 94.36(B)(3) "Building" is hereby adopted and shall be and read as follows in its entirety with all other sections and subsections of Section 94-36 not expressly amended hereby remaining in full force and effect: :

§ 94.36 - NOISE NUISANCES.

(B) The following acts, among others, are hereby declared to be noise nuisances in violation of this subchapter, but said enumeration shall not be deemed to be exclusive, to wit:

...

"(3) *Building & Construction.* Construction work, including but not limited to the erection, including excavation, demolition, alteration, or repair work on any building, or building construction site, at any time other than between the hours of 7:00 a.m. and 9:00 p.m. on any day of the week is hereby declared a public nuisance and an intentional, knowing or reckless violation is prohibited, except when work is performed in response to an urgent necessity and the work must be done in the interest of public health, safety or convenience. Notwithstanding the foregoing, the Director of Planning, Director of Public Works, Building Official and/or City Engineer may issue a special waiver authorizing work outside of the hours authorized in this section. When determining whether to issue a waiver, the following factors shall be considered: (1) proximity of the proposed construction to residential properties; (2) the presence of noise buffering screening, whether live screening such as trees or man-made screening; (3) the nature of the proposed construction activities and the type and duration of the noise that will be created by the activities; and (4) the business reason that the work must be performed outside of the time authorized in this section. A request for waiver shall be made at least five (5) business days prior to the date for which alternative work hours are being requested. Denial of a waiver may be appealed to the City Manager within five (5) business days after the date of denial. The decision of the City Manager shall be final."

...

SECTION 3.
Severability

Should any section, 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. Corinth declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 4.
Savings

In the event of a conflict between the provisions of this Ordinance and any other regulation or rule prescribed by Charter, another ordinance, resolution or other authorization of the City, the provisions of this Ordinance shall control. Notwithstanding the foregoing, all rights and remedies of the City are expressly saved as to any and all complaints, actions, claims, or lawsuits, which have been initiated or have arisen under or pursuant to such conflicting Ordinance, or portion thereof, on

the date of adoption of this Ordinance shall continue to be governed by the provisions of that Ordinance and for that purpose the conflicting Ordinance shall remain in full force and effect.

SECTION 5.
Cumulative Repealer

This Ordinance shall be cumulative of all other Ordinances of the City of Corinth and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance or where expressly repealed hereby. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance.

SECTION 6.
Penalty

Any person, firm or corporation who violates any provision of this Ordinance or the Code of Ordinances, as amended hereby, shall be subject to a fine not to exceed the sum of five hundred dollars ($500.00) for each offense, and each and every day any such offense shall continue shall be deemed to constitute a separate offense, provided, however, that in all cases involving an intentional, knowing, reckless or criminally negligent violation of any provision of this ordinance or Code of Ordinances, as amended hereby, governing public health shall be subject to a fine not to exceed the sum of two thousand dollars ($2,000.00)

SECTION 7.
Effective Date

This Ordinance shall take effect and be in full force from and after the date of its passage and publication, as provided by state law and City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF CORINTH, TEXAS on this 14 day of November, 2019.

Bill Heidemann, Mayor

Attest:

Kimberly Pence, City Secretary

CITY OF CORINTH TEXAS

Approved as to Form:

Patricia A. Adams, City Attorney