ORDINANCE NO. 03-17-2011B

AN ORDINANCE REPEALING ORDINANCE NO. 07-01-2010A, AND AMENDING TITLE 7, CHAPTER 7.28 OF THE ELKINS MUNICIPAL CODE AND FOR OTHER PURPOSES

BE IT ORDAINED BY THE CITY COUNCIL OF ELKINS, ARKANSAS, THAT:

Section 1: Title 7, Chapter 7.28 entitled NOISE, of the Elkins' Municipal Code is hereby amended by deleting Sections 7.28.01, 7.28.02, 7.28.03, 7.28.04 and 7.28.05.

Section 2: Title 7, Chapter 7.28 entitled NOISE of the Elkins' Municipal Code is hereby amended by adding thereto the word, "Control" to the Chapter Title and adding the following:

Chapter 7.28
NOISE CONTROL

7.28.06 Definitions:

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Decibel (dB). A unit for measuring the volume of a sound, equal to 20 times the logarithm to the base ten of the ratio of the pressure of the sound measured to the referenced pressure, which is 20 micropascals (20 micronewtons per square meter).

Emergency. Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency work. Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Gross vehicle weight rating (GVWR). The value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR) which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

Motor carrier vehicle engaged in interstate commerce. Any vehicle for which regulations apply pursuant to Section 18 of the Federal Noise Control Act of 1972 (PL92-574), as amended, pertaining to motor carriers engaged in interstate commerce.

Noise. Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

Noise disturbance. Any sound which:

1. Endangers or injures the safety or health of humans or animals;

2. Annoys or disturbs as reasonable person of normal sensitivities; or

3. Endangers or injures personal or real property.

Public right-of-way. Any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.

Public space. Any real property or structures thereon which are owned or controlled by a governmental entity.

Sound level. The weighted sound pressure level obtained by the use of a sound level meter and frequency weighing network, such as A, B, or C as specified in the American National Standards Institute's specifications for sound level meters. If the frequency weighing employed is not indicated, the A-weighing shall apply.

Sound level meter. An instrument which includes a microphone, amplifier, RMS detector, integrator or time average, or output meter, and weighing network used to measure sound pressure levels.

Sound pressure level. Twenty times the logarithm to the base ten of the ratio of the RMS sound pressure to reference pressure of 20 micropascals (20×10^{-6} N/m^2).

Transient sound source. Noise, the source of which is lawn equipment, an implement of husbandry, a domestic power tool, or the repairing, rebuilding, modifying or testing of any motor vehicle or motorcycle.

Section 7.28.07 Unreasonable Or Excessive Noise Prohibited; Exceptions:

A) Notwithstanding any other provision of this chapter, and in addition thereto, it shall be unlawful for any person to make, or continue or cause or permit to be made or continued, any noise disturbance.

B) The provisions of this section shall not apply to:

1) The emission of sound for the purpose of alerting persons to the existence of an emergency;

2) The emission of sound in the performance of emergency work;

3) The movement of aircraft which is in all respects conducted in accordance with, or pursuant to applicable federal laws or regulations;

4) The use of bells or chimes in conjunction with places of religious worship; and

5) The intentional sounding or permitting the sounding of any fire, burglar or civil defense alarm, siren, whistle or similar stationary or emergency signaling device, for emergency purposes or for testing, provided such testing uses only the minimum cycle test time.

C) For the purpose of this section, the use of an amplification device, radio, television, phonograph, drum, musical instrument or similar device which produces, reproduces, or amplifies sound shall be deemed annoying or disturbing to a person, reasonably calculated to disturb the peace and unreasonably offensive and injurious to the public if the sound is produced between the hours of 1:00 a.m. and 8:00 a.m., and is plainly audible a distance of 150 feet or more from the source of the sound.

1) Plainly audible means any sound produced as set forth above which clearly can be heard at a distance of 150 or more feet. The measurement standard shall be by the auditory senses, based on direct line of sight. Words or phrases need not be discernable and bass reverberations are included.

2) This provision shall not apply to athletic or school related events.

Section 7.28.08 Measurements.

Sound level measurements shall be made with a sound level meter Type II or better using the A-weighted scale in conformance with the standards promulgated by the American National Standards Institution.

Section 7.28.09 Limitations by Land Use Category.

A) No person shall operate or cause to be operated, or permit, contract or allow to be operated on premises on public or private property any identifiable source of sound in such a manner as to create a sound level within the use districts in Table 1 below which exceeds the maximum noise levels as set forth in Table 1 as measured at any point on the boundary of the property from which the sound or noise was emanating. Except between the hours of 10:00 p.m. and 1:00 a.m., a complaint under this section must be brought by a property owner or leaseholder affected by excessive noise on their property.

TABLE 1

Use Districts	Time	Maximum Noise Levels
All residential zones	7:00 a.m. to 11:00 p.m.	60 dB(A)
All residential zones	11:00 p.m. to 7:00 a.m.	55 dB(A)
All commercial zones	7:00 a.m. to 11:00 p.m.	75 dB(A)

All commercial zones	11:00 p.m. to 7:00 a.m.	70 dB(A)
All industrial zones	7:00 a.m. to 11:00 p.m.	80 dB(A)
All industrial zones	11:00 p.m. to 7:00 a.m.	75dB(A)

All measurements shall be taken with a sound level meter in its fast or peak level setting.

B) District boundaries. When a noise source can be identified and its noise measured in more than one use district, the noise level limits of the most restrictive use district shall apply at that district boundary.

C) Commercial source. Notwithstanding the zoning classification of the underlying parcel, restaurants, night clubs, private clubs, auditoriums, dance halls, and rehearsal studios are defined as commercial sound sources existing in commercial zones for the purposes of this chapter.

D) Transient source. For a transient sound emanating in any land use category, the peak noise level shall not exceed 20 decibels above the limit set in Table 1 above.

E) Construction. Construction projects shall be subject to the limitations specified for industrial zones for the period of time allowed by the building permit.

Section 7.28.10 Motor Vehicle And Motorcycle Sound Limit.

A) No person shall operate or cause to be operated a public or private motor vehicle or motorcycle on a public right-of-way or private property at any time and in such a manner that the sound level emitted by the motor vehicle or motorcycle exceeds the level set forth in Table II below.

TABLE II
MOTOR VEHICLE AND MOTORCYCLE
SOUND LIMIT

(Measured at 25 Feet From the Near
Side of the Nearest Lane Monitored)

Sound Level in dB

Vehicle class	Speed limit 35mph or less	Speed limit over 35mph	Stationary Run-up
Motor vehicle carrier engaged in interstate commerce of GVWR	86	90	88

or GCWR of 10,000 lbs. or more			
Any other motor vehicle or any combination of vehicles towed by any such motor vehicles	78	78	78
Motorcycles	78	78	78

B) No person shall operate or cause to be operated any motor vehicle or motorcycle not equipped with a muffler or other sound dissipative device in good working order and in constant operation.

C) No person shall sound any horn or other auditory signaling device on or in any motor vehicle on any public right-of-way or public place, except as a warning of danger.

D) Operating or causing to operate any sound amplification device from within a vehicle so that the sound is plainly audible at a distance of 30 feet or more from the vehicle whether in a street, a highway, an alley, parking lot or driveway, whether public or private property, is prohibited and declared to be a noise disturbance in violation of this chapter.

E) No person shall operate or cause to be operated a motor vehicle or motorcycle by rapidly advancing its throttle (revving) such that a noise disturbance occurs.

Section 7.28.11. Radios and Loudspeakers Used for Certain Purposes Prohibited.

Shall be unlawful for any person to use, operate or permit to be played, used or operated any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets from a point of origin located on private property, for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

Section 7.28.12 Permit For Variance.

A) Application; Issuance.

1) The Mayor shall have the authority to issue a permit, upon a showing of undue hardship, for a variance from the provisions of this section upon a showing by the applicant that:

a) Additional time is necessary for the applicant to alter or modify his activity or operations to comply with this section; or

b) The activity, operation or noise source will be of a temporary duration and cannot be done in a manner that would comply with this section; and

c) No reasonable alternative is available to the applicant.

2) An application for a variance permit shall be in writing on a form prescribed by the Mayor. In issuing a variance permit, the Mayor may impose reasonable conditions or requirements necessary to minimize adverse effects upon the surrounding neighborhood. For events to be attended by the public, the written application for a variance shall be filed with the Mayor a minimum of 14 days prior to the date on which a variance is requested.

B) Denial; appeal. An applicant who is denied a variance by the Mayor may appeal to the Elkins City Council by filing written notice of appeal with the Recorder/Treasurer within 10 days from the date of the Mayor's decision. The notice of appeal shall specifically state the reasons why the applicant considers the Mayor's findings and decision to be in error.

Section 7.28.13 Order in Lieu of Notice of Violation.

A) In lieu of issuing a notice of violation, a noise control officer responsible for enforcement of any provision of this section may issue an order requiring abatement of any source of sound alleged to be in violation of this section within a reasonable time period. An abatement order shall not be issued when the noise control officer has reason to believe that there will not be compliance with said order.

B) A violation of any provision of this section shall be cause for a notice of violation to be issued by the noise control officer.

Section 7.28.14 Compression Release Engine Brake.

A) A compression release engine brake, or other hydraulically operated device that converts a power producing diesel or gas engine into a power absorbing retarding mechanism with a correspondingly increased amount of noise emission shall not be engaged or used within the city limits of Elkins except in the case of failure of the service brake system, adverse weather conditions, or other emergency necessitating the compression release engine brake's used.

B) Fire trucks, and those municipal vehicles equipped with the Quiet Brake and Silent Partner System are exempted from the requirements of this section.

Section 7.28.15 – 7.28.98 Reserved.

continuous in respect to time, the penalty for allowing the continuation thereof shall not exceed $250.00 for each day that the same is unlawfully continued.

Section 3: Ordinance No. 07-01-2010A is hereby repealed.

PASSED AND APPROVED this 21st day of April, 2011.

L. Bruce Ledford

L. BRUCE LEDFORD, Mayor

ATTEST:

JASON BATHON, City Clerk