

**ORDINANCE NO. 01102013-001**

**AN ORDINANCE OF THE CITY OF MOULTON, LAVACA COUNTY, TEXAS AMENDING CHAPTER 8, OFFENSES AND NUISANCES, ARTICLE 8.05 NOISE, BY AMENDING SECTION 8.05.003 "NUISANCES ENUMERATED" TO ADD ENGINE BRAKE DEFINITION, BY ADDING SECTION 8.05.005 "USE OF ENGINE BREAKS" PROHIBITING THE USE OF ENGINE BRAKES (ALSO KNOWN AS "JAKE BRAKES"); AND BY ADDING SECTION 8.05.006 "PENALTY" DESCRIBING THE PENALTY FOR VIOLATION OF THE ARTICLE; PROVIDING FOR SAVINGS AND SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE AND NOTICE AND MEETING.**

**WHEREAS**, the City of Moulton, Texas ("City") is a municipality incorporated and operating under the Laws of the State of Texas; and

**WHEREAS**, pursuant to Texas Local Government Code § 51.001, the City Council is authorized to adopt an ordinance that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

**WHEREAS**, pursuant to Texas Local Government Code § 51.012, the City Council is authorized to adopt an ordinance, not inconsistent with state law, that the council considers proper for the government, interest, welfare or good order of the City; and

**WHEREAS**, pursuant to Texas Local Government Code § 217.003, the City Council may suppress or prevent noise or disturbance in any public or private place in the City; and

**WHEREAS**, the City seeks to control noises and the nuisance thereby created in such a manner as to cause the least hardship or offense to the greatest number of people; and

**WHEREAS**, the City Council finds that the provisions of this ordinance will promote the public health, safety, morals and general welfare; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MOULTON, TEXAS, THAT:**

**SECTION I. FINDINGS OF FACT**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Moulton and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

**SECTION 2. AMENDMENT TO ARTICLE 8.05.003**

Article 8.05.003 of the Code of Ordinances of the City of Moulton, Texas is hereby amended to add subparagraph (14) as follows:

**Sec. 8.05.003 Nuisances enumerated**

- (14) The use or operation of an unmuffled auxiliary or compression engine brake (also known as "Jake" brake) that produces any noise in addition to the normal operating engine noise is prohibited within the city limits.

**SECTION 3. ADDITION OF ARTICLE 8.05.005**

Chapter 8.05 of the Code of Ordinances of the City of Moulton, Texas is hereby amended to add Article 8.05.005 as follows:

**Sec. 8.05.005 Use of Engine Brakes**

It shall be unlawful for any person to activate or use an engine brake as defined in Section 8.05.003(14) within the city limits except in an emergency situation. This provision is not intended to prohibit the passage of vehicles equipped with engine brakes or "Jake brakes" in the city limits but rather prohibits the use of such equipment in the city limits. The term "emergency situation," for the purposes of this section and Section 8.05.003(14), shall mean one in which there is an imminent danger of collision with persons, property or animals. This section shall not be construed to prohibit the use of braking mechanisms by emergency vehicles while in the performance of their official or normal duties.

**SECTION 4. ADDITION OF ARTICLE 8.05.006**

**Sec. 8.05.006 Penalty**

(a) *Criminal Prosecution.* Any person violating any provision of this article 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. Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this article.

(b) *Civil Remedies.* Nothing in this article shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law, including, but not limited to the following:

- (1) Injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance; and
- (2) A civil penalty up to one hundred dollars (\$100.00) a day when it is shown that the defendant was actually notified of the provisions of the ordinance and after receiving notice committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance; and
- (3) Other available relief.

**SECTION 5. SAVINGS**

The repeal of any ordinance or parts of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or a discontinuing,

abating, modifying or altering of any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this ordinance.

**SECTION 6. SEVERABILITY**

If any provision, section, sentence, clause or phrase of this ordinance, or the application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council of the City of Moulton in adopting, and of the Mayor in approving this ordinance, that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any portion, provision or regulation.

**SECTION 7. REPEALER**

The provisions of this ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance.

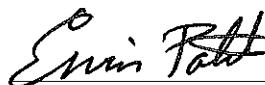
**SECTION 8. EFFECTIVE DATE**

This ordinance shall take effect immediately from and after its passage and publication as may be required by law.

**SECTION 9. NOTICE AND MEETING**

It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**PASSED, ADOPTED AND APPROVED THIS 10th DAY OF JANUARY, 2013.**



Ervin Patek  
Mayor, City of Moulton, Texas

ATTEST:



Carlene Bradley  
City Secretary of the City of Moulton, Texas