ORDINANCE NO. 2009-O-110

AN ORDINANCE OF THE VILLAGE OF VOLENTE, TEXAS AMENDING THE NOISE CONTROL ORDINANCE (ORDINANCE NO. 2008-O-88 BY MODIFYING RESTRICTIONS ON CONSTRUCTION ACTIVITIES; REPEALING SPECIAL EXCEPTIONS PROVISIONS FOR CONSTRUCTION ACTIVITIES; ADDING PROCEDURES FOR APPLICATIONS FOR VARIANCES FOR CONSTRUCTION ACTIVITIES, INCLUDING REQUIRED PLANS AND SCHEDULES; PERMITTING NOISE CONTROL OFFICER TO MAKE RECOMMENDATIONS ON VARIANCE APPLICATIONS; DEFINING "BEST AVAILABLE TECHNOLOGY"; AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE, AND PUBLIC NOTICE AND OPEN MEETINGS REQUIREMENTS.

WHEREAS, the Village of Volente adopted a Noise Control Ordinance under Ordinance No. 2008-O-88 adopting sound standards to protect its citizens from excessive noise within the Village of Volente in order to promote the public health, safety, and general welfare of the citizens of the Village of Volente; and

WHEREAS, the Village Council has determined that, rather than permitting the Village's Noise Control Officer to grant special exceptions to the Ordinance's provisions, the public health, safety, and general welfare of the citizens of the Village of Volente would best be served by instituting a procedure for variance applications to be considered by the Village Council with respect to construction activities; and

WHEREAS, the Village Council has concluded that applications for variances for construction activities should include a Construction Schedule and a Noise Mitigation Plan, which should include a Construction Barrier Plan and require implementation of the best available technology;

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF VOLENTE, TEXAS, THAT:

Section 1. **Amendment. Section 44.002 of Ordinance No. 2008-O-88 is hereby amended to add new subsection (d), and all other subsections of 44.002 shall be realphabetized accordingly. New subsection (d) shall read as follows:**

d. "Best Available Technology" Means
The best construction machinery, equipment, and technology commercially available in the United States and economically feasible that comes closest to complying with the Sound Level limitations prescribed by this Ordinance. In no event may the Best Available Technology include equipment and machinery emitting Sound Levels in excess of the

limits prescribed by the schedule in Appendix A to this Ordinance.

Section 2. **<u>Amendment</u>. Former Section 44.002(j) of Ordinance No. 2008-O-88 is hereby moved and reassigned as Section 44.002(t) so that it falls within the appropriate alphabetical sequence. Section 44.002(t), the material terms of which remain unchanged, shall read:**

t. "Noise Control Officer" Means
The Code Official having lead responsibility for administration and enforcement of this ordinance.

Section 3. **<u>Amendment</u>. Section 44.002 of Ordinance No. 2008-O-88 is hereby amended to modify subsection (r), which shall read:**

r. "Muffler or Sound Dissipative Device" Means
A device for abating sound from the exhaust of an internal combustion engine.

Section 4. **<u>Amendment</u>. Section 44.002(ff) of Ordinance No. 2008-O-88 (former Section 44.002(ee)) is hereby amended to read as follows:**

ff. "Sound Pressure Level" Means
20 times the logarithm to the base 10 of the ratio of the RMS sound pressure to the reference pressure of 20 micropascals. The sound pressure level is denoted Lp, or SPL and is expressed in decibels.

Section 5. **<u>Amendment</u>. Section 44.003(b)(5) of Ordinance No. 2008-O-88 is hereby amended to read as follows:**

(5) Review of Public and Private Projects
Review public and private projects, subject to mandatory review or approval by other departments, for compliance with this ordinance, if such projects are likely to cause sound levels in violation of this ordinance.

Section 6. **<u>Amendment</u>. Section 44.003(b) of Ordinance No. 2008-O-88 is hereby amended to add new subsection (9), which shall read:**

(9) Recommendations on Variance Requests
Make recommendations to the Village Council on requests for variances submitted pursuant to Section 44.006(b).

Section 7. **<u>Amendment</u>. Section 44.004(e) of Ordinance No. 2008-O-88 is hereby amended to read as follows:**

e. Low Noise Emission Products
Any product which has been certified by the Administrator of the United

States Environmental Protection Agency pursuant to Section 15 of the Noise Control Act as a low noise emission product and which the NCO determines is suitable for use as a substitute, shall be procured by the Village and used in preference to any other product, provided that such certified product is reasonably available and has a procurement cost which is not more than (125) percent of the least expensive type of product for which it is certified as a substitute.

Section 8. **<u>Amendment</u>. Table 2 under Section 44.005(a) of Ordinance No. 2008-O-88 is hereby amended to be entitled as follows:**

Table 2. One-Third Octave Band Sound Pressure Level Limits

Section 9. **<u>Amendment</u>. Section 44.005(b)(10) of Ordinance No. 2008-O-88 is hereby amended to read as follows:**

(10) Measure the A-weighted sound level, the C-weighted sound level, and, if necessary pursuant to Section 44.005(a), the one-third octave band sound pressure levels.

Section 10. **<u>Amendment</u>. Section 44.005c(4) of Ordinance No. 2008-O-88 is hereby REPEALED in its entirety, and new Section 44.005c(4), which shall read as follows, is hereby substituted in its place:**

(4) Construction

Operating or permitting the operation of any tools or equipment used in construction, drilling, or demolition work except for emergency work of public service utilities or by variance issued pursuant to the provisions of this ordinance and except for the use of domestic power tools, which are addressed in Section (9):

(A) Before 7:00 a.m. or after 9:00 p.m. on weekdays, or before 8:00 a.m. or after 6:00 p.m. on Saturdays, Sundays or holidays, during the months of April through October., such that the sound therefrom creates a Noise Violation across a residential real property boundary, except for emergency work of public service utilities or by special exception issued pursuant to the provisions of this Ordinance.

(B) Before 7:00 a.m. or after 7:00 p.m. on weekdays, or before 8:00 a.m. or after 6:00 p.m. on Saturdays, Sundays, or holidays, during the months of November through March.

(C) After 7:00 a.m. and before 9:00 p.m. on weekdays, or after 8:00 a.m. and before 6:00 p.m. on Saturdays, Sundays or holidays during the months of April through October, in such a manner so as to create a Noise Violation across a residential real property boundary, except for

emergency work of public service utilities or by variance issued pursuant to the provisions of this Ordinance.

(D) After 7:00 a.m. and before 7:00 p.m. on weekdays, or after 8:00 a.m. and before 6:00 p.m. on Saturdays, Sundays or holidays during the months of November through March, in such a manner so as to create such that the sound therefrom creates a Noise Violation across a residential real property boundary, except for emergency work of public service utilities or by variance issued pursuant to the provisions of this Ordinance.

(E) Using construction equipment that is not properly maintained and equipped with the best exhaust silencer offered by the equipment manufacturer or by a silencer manufacturer authorized or used by the equipment manufacturer. Construction equipment should be sited to minimize noise impacts. Work processes should be planned to minimize noise impacts. Any noise-reduction accessories that are degraded as determined by the NCO either by visual inspection or by listening shall be replaced with the best available accessories.

(F) Using compression braking (sometimes referred to as Jake brakes) on a construction project site or by project equipment traveling to and from the project on the roads of the Village of Volente.

(G) Operating vehicles traveling greater than 5 mph on any surfaces within 800 ft of an occupied residence that have not been checked weekly for smoothness and re-graded as necessary to prevent loud noises from vehicles driving over bumps.

(H) Operating construction vehicles that will back up within 800 ft of an occupied residence more than 50 times during the entire duration of the permitted construction project unless the vehicle is treated in one of the following ways:

1. The back-up alarm is turned off, and a signalman is used instead;
2. A "smart" back-up alarm is used that adjusts the warning signal according to the actual background sound level;
3. A broadband back-up alarm is used that creates a non-tonal sound;
4. A legal, alarmless back-up camera system is used; or
5. A system is used that activates the alarm only when there is an obstruction behind the vehicle.

Section 11. **<u>Amendment</u>. Sections 44.006(b) and 44.006(c) of Ordinance No. 2008-O-88 are hereby REPEALED in their entirety, and new Sections 44.006(b) and 44.006(c), which shall read as follows, are hereby substituted in their place:**

b. Variances

(1) The Village Council shall have the authority, consistent with this section, to grant requests for variances from the restrictions on noise standards for construction activity imposed under this Ordinance.

(2) Any person seeking a variance pursuant to this section shall file an application with the Village. The application shall include a proposed Noise Mitigation Plan and proposed Construction Schedule.

(A) The Noise Mitigation Plan shall include, at minimum, a schedule listing each specific construction activity that will occur and the number and specific type of equipment and machinery to be used in each construction activity. The equipment and machinery used must be the Best Available Technology, as defined in Section 44.002, but in no event shall the equipment and machinery emit Sound Levels in excess of the limits prescribed by the schedule in Appendix A to this Ordinance.

(B) The Noise Mitigation Plan must include a Construction Barrier Plan specifically identifying the type and location of acoustical barriers, which the applicant must, unless otherwise provided below, install between the site of the construction activity and transportation routes and all occupied residences within 500 ft. The noise barriers must be constructed unless:

(1) The construction noise does not violate the Village of Volente noise ordinance,
(2) The construction activity impacting a particular area will occur for less than 10 days,
(3) The best designed barrier will provide an average noise reduction at the residence of less than 5 dBA for the 10-day period with the greatest noise impact, or
(4) The necessary barrier is not economically feasible as supported by a barrier noise and cost study to be provided by applicant by a consultant approved by the Village NCO.

(C) The Construction Schedule shall include, at minimum, a list of the different specific construction activities that will occur, the construction equipment and machinery that will be operated in connection with each specific construction activity, the proposed weekday hours and weekend hours during which each construction activity will occur, the number of days the applicant estimates it will take to complete each specific construction activity, and the order in which the different construction activities will occur (including any

overlapping of construction activities).

(D)The following construction activities may not be permitted by variance:

(1) Construction activities at distances greater than 800 ft from any occupied residence that result in a Noise Violation before 8 am or after 7 pm on weekdays, before 9 am and after 5 pm on Saturdays, and at any time on Sundays or holidays.

(2) Construction activities at distances within 800 ft of any occupied residence that result in a Noise Violation before 9 am or after 6 pm on weekdays and at any time on Saturdays and Sundays or holidays.

(3) In addition to the Noise Mitigation Plan and Construction Schedule required by subsection (2), the variance application shall contain information which demonstrates that bringing the source of sound or activity for which the variance is sought into compliance with this ordinance would constitute an unreasonable hardship on the applicant, on the community, or on other persons. Notice of an application for a variance shall be published according to Village procedure. Any individual who claims to be adversely affected by allowance of the variance may file a statement with the Village containing any information to support his claim. If the Village Council finds that a sufficient controversy exists regarding an application, a public hearing may be held.

(4) In determining whether to grant or deny the application, the Village Council shall balance the hardship to the applicant, the community, and other persons of not granting the variance against the adverse impact on the health, safety, and welfare of persons affected, the adverse impact on property affected, and any other adverse impacts of granting the variance. Applicants for a variance and persons contesting a variance may be required to submit any information the Village Council may reasonably require. In granting or denying an application, the Village Council shall place on public file a copy of the decision and the reasons for denying or granting the variance.

(5) A variance shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the variance shall terminate it and subject the person holding it to those provisions of this ordinance regulating the source of sound or activity for which the variance was granted, including enforcement actions.

(6) Application for extension of time limit specified in a variance or for modification of other substantial conditions shall be treated like applications for

an initial variance under subsection (2).

(7) The Village Council may issue guidelines defining the procedures to be followed in applying for a variance and the criteria to be considered in deciding whether to grant a variance.

c. Exceptions for Time to Comply

(1) Within 30 days following the effective date of this ordinance, the owner of any commercial or industrial source of sound may apply to the Village Council for an exception in time to comply with Section 44.005. The Village Council shall have the authority, consistent with this section, to grant an exception, not to exceed 60 days from the effective date of this ordinance.

(2) Any person seeking an exception in time to comply shall file an application with the Village. The application shall contain information which demonstrates that bringing the source of sound or activity for which the exception is sought into compliance with this ordinance prior to the date requested in the application would constitute an unreasonable hardship on the applicant, on the community, or on other persons. Notice of an application for an exception in time to comply shall be published according to Village procedure. Any individual who claims to be adversely affected by allowance of the exception in time to comply may file a statement with the Village containing any information to support their claim. If the Village finds that a sufficient controversy exists regarding an application, a public hearing may be held.

(3) In determining whether to grant or deny the application, the Village Council shall balance the hardship to the applicant, the community, and other persons of not granting the exception in time to comply, against the adverse impact on health, safety, and welfare of persons affected, the adverse impact on property affected, and any other adverse impacts of granting the exception. Applicants for exceptions in time to comply and persons contesting exceptions may be required to submit any information the Village Council may reasonably require. In granting or denying an application, the Village Council shall place on public file a copy of the decision and the reasons for denying or granting the exception in time to comply.

(4) Exceptions in time to comply shall be granted to the applicant containing all necessary conditions, including a schedule for achieving compliance. The exception in time to comply shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the exception shall terminate the exception and subject the person holding it to those provisions of this ordinance for which the exception was granted.

(5) Application for extension of time limits specified in exceptions in time to comply or for modification of other substantial conditions shall be treated like

applications for initial exceptions under subsection (2), except that the Village Council must find that the need for the extension or modification clearly outweighs any adverse impacts of granting the extension or modification.

(6) The Village Council may issue guidelines defining the procedures to be followed in applying for an exception in time to comply and the criteria to be considered in deciding whether to grant an exception.

Section 12. **Amendment. Ordinance No. 2008-O-88 is hereby amended to add Appendix "A" which shall read as follows:**

Appendix A

Maximum Allowable Sound Levels for Construction Equipment

Equipment	Lp at 50 ft, dBA	
	Before 2015	2015 & after
Air compressor	75	75
Backhoe	85	80
Dozer (<300 hp)	85	80
Dozer (=>300 hp)	88	85
Crane	83	80
Excavator	85	80
Front-end loader (<300 hp)	85	80
Front-end loader (=>300 hp)	88	83
Grader	85	80
Jack hammer	82	80
Roller	83	80
Scraper	88	83
Trencher	88	88
Truck	85	80

Section 13. **Severability:** If any provision of this Ordinance or the application of any provision of this Ordinance to any person or circumstance is held unlawful or invalid, then the unlawfulness or invalidity shall not affect other provisions or applications of this Ordinance or the Ordinance it is amending, which can be given effect without the unlawful or invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 14. **Effective Date:** This Ordinance shall take effect immediately from and after its passage and publication of its enacting ordinance in accordance with the provisions of *Chapter 52 of the Texas Local Government Code.*

Section 15. **Open Meetings:** It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required 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 AND APPROVED on the ___ day of December, 2009, by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions) of the Village Council of the Village of Volente, Texas.

JAN YENAWINE, MAYOR OF THE VILLAGE OF VOLENTE

ATTEST:

JENNIFER ZUFELT, CITY SECRETARY