



## **Texas Counties have no Authority to Regulate Noise**

Many Texas cities have adopted ordinances to regulate noise, including engine-braking ordinances. Cities' authority to regulate noise is found in Texas Local Government Code Chapter 51, which grants them general police power.<sup>1</sup> As the Texas Supreme Court has observed, cities "look to the Legislature not for grants of power, but only for limitations on their power."<sup>2</sup>

In contrast, counties lack general police power and may exercise only those powers expressly conferred upon them by the Constitution and by the Legislature.<sup>3</sup> To date, the Legislature has not conferred upon counties the authority to regulate noise in their unincorporated areas. Since at least 2009, various bills have been presented in legislative session that would have empowered counties to pass noise ordinances, but none of the bills made it out of session. Until the Texas Legislature grants the state's counties authority to adopt noise ordinances, Montgomery County will remain unable to regulate noise.

When neighbors in unincorporated areas of the county disagree on appropriate times and volumes for noise, county residents' may have legal recourse by contacting their local constable or sheriff's office if the noise is so loud that it violates the state's criminal statute. Under Section 42.01(5) of the Texas Penal Code, a person commits an offense if he or she "intentionally or knowingly . . . makes unreasonable noise . . . in or near a private residence that he has no right to occupy." Section 42.01(c)(2) of the Texas Penal Code states that a noise is presumed unreasonable if the decibel level exceeds 85. Noise is considered unreasonable—and in violation of the statute—if it is 85 decibels at the point where it is observed by others.

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<sup>1</sup> See TEX. LOCAL GOV. CODE § 51.001, stating that "[t]he governing body of a municipality may adopt . . . an ordinance, rule, or police regulation that (1) is for the good government, peace or order of the municipality."

<sup>2</sup> *Dallas Merchants & Concessionaires Ass'n v. City of Dallas*, 852 S.W.2d 489, 490–91 (Tex. 1993).

<sup>3</sup> See *Canales v. Laughlin*, 214 S.W.2d 451 (Tex. 1948).