

## ARTICLE 8.04 NOISE

### Sec. 8.04.001. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Daytime/evening hours mean from 8:00 a.m. to 9:30 p.m. in both residential and nonresidential areas.

dB(A) means the intensity of a sound expressed in decibels.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss that demands immediate action.

Emergency work means any work performed for the purpose of:

- A. Preventing or alleviating physical trauma or property damage threatened or caused by an emergency;
- B. Restoring property to a safe condition following a fire, accident, or natural disaster;
- C. Protecting persons or property from exposure to danger; or
- D. Restoring public utilities.

Nighttime hours mean the hours between 9:30 p.m. and 8:00 a.m. in both residential and nonresidential areas.

Nonresidential property/areas mean any real property that is not included in the definition of residential property as defined in this section. Without limitation, the term includes properties that have been zoned other than as residential property, including properties that are devoted to public purposes, such as public parks.

Normal business hours mean 8:00 a.m. to 5:00 p.m. Monday through Friday and 8:00 a.m. to 12:00 p.m. on Saturday.

Outdoor/open venues means events attended by the public, including but not limited to musical concerts, performances, and dances, that are held in or at sites that are not permanent structures or for which all sound equipment and monitors are not enclosed within a permanent structure.

Permanent structure means structures that have at least two separate solid walls that are intended to be permanently in place and are constructed from solid building material other than single-layer plywood, plastic, chicken wire, tenting, tarps, stays, tin or similar material that would not be regarded by a normal person as building material for a permanent structure.

Plainly audible means any sound that can be detected by a person using his or her unaided hearing

faculties. For example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the enforcement officer need not determine the name of the song, the specific words or the artist performing it.

The detection of the rhythmic bass component of the music is sufficient to constitute a plainly audible sound.

Property line means with respect to single-occupancy properties, the line along the ground surface and its vertical extension that separates the real property owned, leased, or occupied by another person. With respect to shared occupancy properties, the term shall mean the imaginary line that represents the legal limits of occupancy of any person who owns, leases, or otherwise occupies an apartment, condominium, hotel or motel room, office, or any other type of occupancy from that of other occupants.

Quiet hours mean the hours between 9:30 p.m. and 8:00 a.m. in both residential and nonresidential areas. In addition, it is a violation for a person to conduct, permit, or allow any activity or sound source to produce a sound discernible beyond the property on which the sound is being generated that measures at or above 55 dB(A).

Residential property/areas mean any real property zoned residential under the city's zoning ordinances and regulations.

Streets shall be defined as being in the same category as the surrounding zoning. In the case of residential properties/areas which are across the street from nonresidential properties/areas, the street shall be considered to be in a residential area.

(Ordinance XXX)

#### **Sec. 8.04.002. Penalty.**

Any person who violates any portion of this article is guilty of a misdemeanor and shall upon conviction be subject to a fine of not less than thirty-five dollars (\$35.00) and not more than two thousand dollars (\$2,000.00). For the second or subsequent conviction within a twelve-month period, said person shall be fined not less than seventy-five dollars (\$75.00) and not more than two thousand dollars (\$2,000.00).

(Ordinance XXX)

#### **Sec. 8.04.003. Defenses.**

The following defenses shall apply to any offense established in this article, and the same must be specifically pled by anyone charged with a violation:

A. The emission of any sound was for the purpose of alerting persons to the existence of an emergency, danger, or attempted crime, or was produced pursuant to any safety rule or regulation of any governmental entity or agency. Example includes the sound was produced by an authorized emergency vehicle.

B. The sound was generated:

1. At a lawfully scheduled event;
2. By a parade and spectators and participants on the parade route during a lawful parade;
3. By spectators and participants at a lawfully scheduled event;
4. By patrons and participants using cannons and gunfire during historical battle reenactments for which a pyrotechnic permit was obtained, and the explosives were inspected by the fire marshal;
5. By a pyrotechnic display that was inspected and approved by the fire marshal;
6. By spectators and participants of any outdoor event, fun run, race, festival, fiesta, or concert that was sponsored or co-sponsored by the city and in full compliance with a permit issued by the city.
7. The sound was produced by emergency work.
8. The sound was produced during normal business hours by the erection, excavation, construction, or demolition (See Section 8.04.006) of a building or structure, including the use of any necessary tools or equipment, which activity did not produce a sound exceeding 75 dB(A) when measured from the property line of the property where the sound is being received.
9. The sound was produced by operating or permitting the operation of any mechanically powered tool such as a saw, drill, sander, router, grinder, lawn or garden tool, lawnmower, or any other similar device used between the hours of 8:00 a.m. and 8:00 p.m., when the sound is being produced for the maintenance or upkeep of the property on which it was operated, which activity did not produce a sound exceeding 75 dB(A) when measured from the property line of the property where the sound is being received.
10. The sound was generated as authorized under the terms of a permit issued under section 8.04.010 of this article.
11. The sound was produced by church bells or church chimes when used as part of a religious observance or service during daytime hours for the zone in which the church is located.
12. The sound was produced during daytime/evening hours by activities conducted on public parks, public playgrounds, and public or private school grounds, including, but not limited to, school athletics, band and/or school entertainment practice or events.
13. With the knowledge that outdoor/open venues of music amplified within the city create special conditions and therefore should have special regulations, it shall be *lawful* for any person to make, assist in making, permit, continue, cause to be made or continued, or permit the continuance of music at any open venue during the following hours, which

activity did not produce a sound exceeding 75 dB(A) when measured from the property line of the property where the sound is being received.

Friday 5:00 p.m. to 11:30 p.m.  
Saturday 12:00 noon to 11:30 p.m.  
Sunday 12:00 noon to 5:00 p.m.

(Ordinance XXX)

**Sec. 8.04.004. Maximum permissible sound levels.**

A. In addition to the violations established by this article, it shall be a violation for a person to conduct, permit, or allow any activity or sound source to produce a sound discernible beyond the property on which the sound is being generated that measures at or above 65 dB(A) in residential areas and nonresidential areas. Any sound that exceeds this dB(A) level set forth in this section under the conditions and measurement criteria set forth in this article is a violation of this article. Evidence that an activity or source produces a sound that exceeds the dB(A) level specified in this section shall be prima facie evidence that such sound unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this article.

B. Nighttime hours are considered quiet hours and have a more stringent threshold for maximum permissible sound levels. In addition to the violations established by this article, it shall be a violation for a person to conduct, permit, or allow any activity or sound source to produce a sound discernible beyond the property on which the sound is being generated that measures at or above 55 dB(A) in residential areas and nonresidential areas. Any sound that exceeds this dB(A) level set forth in this section under the conditions and measurement criteria set forth in this article is a violation of this article. Evidence that an activity or source produces a sound that exceeds the dB(A) level specified in this section shall be prima facie evidence that such sound unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this article.

(Ordinance XXX)

**Sec. 8.04.005. Method of sound measurement.**

Whenever portions of this article prohibit sound above a certain decibel limit, measurement of the sound shall be made with a type 1 or type 2 calibrated sound level meter utilizing the A-weighting scale and the slow meter response as specified by the American Standards Association. Measurements recorded shall be taken so as to provide a proper representation of the sound being measured. The microphone of the meter shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound. A windscreen for the microphone shall be used. Traffic, aircraft, and other transportation noise shall not be considered in taking measurements except where such background noise interferes with the noise being measured and cannot reasonably be distinguished from the primary noise. Measurements of sound generated shall be taken from the curb line of the nearest public street to the property where the sound is generated and taken toward the source of the sound. In the event that there is not at least fifty feet

(50') of distance from the building in which sound is being generated and from which sound is being measured, then measurements shall be taken from the street curb line opposite said building of the nearest public street to the property where the sound is generated.

(Ordinance XXX)

#### **Sec. 8.04.006. Pouring of a slab or demolishing a building.**

It shall be unlawful for any person to pour a slab or demolish a building before 8:00 a.m. or after 8:00 p.m. on any day without having notified all persons who would be entitled to notice of a zoning change under the city's zoning ordinance, as may be amended from time to time, in relationship to the property upon which the pouring or demolition is to take place at least ten (10) days prior to such activity. Such notice shall be sent in the same manner as set out in the zoning ordinance. No building permit shall be issued in the absence of such notice. Slabs may be poured prior to 8:00 a.m. with the written approval of the City Administrator from May through September.

(Ordinance XXX)

#### **Sec. 8.04.007. Noisy vehicles.**

- A. The use of any motor vehicle that creates any loud, unreasonable, or unusual noise or violates state regulations for equipment or emissions, including grating, grinding, rattling, or any other loud and unreasonable sound, is hereby prohibited and declared to be unlawful. This section applies to any vehicle that exhibits *sounds of acceleration* in any manner to include while stationary. Sec. 8.04.004 (Maximum permissible sound levels) applies regarding residential and non-residential areas.
- B. No person shall operate an engine of any motor vehicle as defined by the Texas Transportation Code to brake or slow the same through the use of gears (commonly known as "jake braking") or by any other method which produces any noise in addition to the normal operating engine noise.

(Ordinance XXX)

#### **Sec. 8.04.008. Amplified sound.**

- A. It shall be unlawful for any person to make, assist in making, permit, continue, cause to be made or continued, or permit the continuance of any sound using any sound amplifier that is part of or connected to any speaker system, radio, stereo receiver, compact disc player, cassette tape player, microphone, or any other sound source, when operated in such a manner as to disturb the peace, quiet, and comfort of neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for persons who are in the vehicle or within the property or premises in which such sound amplifier is operated and who are voluntary listeners thereto. The operation of any such sound amplifier in such a manner as to be plainly audible at a distance of 50 feet or more from a vehicle shall be presumed to be in violation of this section. The operation of any such sound amplifier in such a manner that bass sounds are plainly audible at a distance of 50 feet or more from the property line of a property or premises in which the amplification is located shall be presumed to be in violation of this section.

- B. It is an affirmative defense to prosecution under this section that the sound source is a motor vehicle and that:
  - 1. The motor vehicle is a mobile sound stage or studio that is being used on a stationary basis at a location not situated upon any street for the purpose of providing sound, during daytime hours, for an event or function; and
  - 2. The use is in compliance with all other provisions in this article.
- C. It shall be unlawful to operate or to permit or to cause the operation of any device that creates vibration that is above the vibration perception threshold of an individual at or beyond the property of the source if on private property or at least fifty (50) feet from the source if on public property or in a public right-of-way. For the purpose of this provision, “vibration perception threshold” means the minimum ground or structure-borne vibrational motion necessary to cause a reasonable person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.

(Ordinance XXX)

**Sec. 8.04.009. Noisy animals.**

- A. The keeping of any animal that causes or makes frequent or long and continued sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons is hereby prohibited and declared to be unlawful and in violation of this article, regardless of when the sound is made, whether for an event or function, or whether the use is in compliance with all other provisions of this article.
- B. In any prosecution for a violation of this section, it shall not be a defense that a loud animal noise which disturbed another person occurred in a residential area either during nighttime hours or when none of the residents of the place where the animal or bird is being kept were at home.
- C. In any prosecution for a violation of this section, the fact that any animal or bird has been allowed or permitted to persistently and chronically violate this section, as demonstrated by the issuance of two or more citations and/or the receipt of two or more complaints from more than one household within a two-month period, shall create a rebuttable presumption that such noise was in violation of this article.

(Ordinance XXX)

**Sec. 8.04.010. Special events.**

- A. It shall be an exception to this article that the maximum permissible sound levels contained herein may be exceeded at certain special events of limited duration for which the sponsor of the event has obtained a permit from the city.
- B. For the purposes of this section, “sponsor” shall mean the person who is legally responsible for the special event, whether a person, corporation, partnership, association, or other entity.

- C. For the purposes of this section, “special event” shall mean a musical concert, live show, symphony, band performance, drama, film, or any other specific activity or program, other than an event described in section 8.04.003, that will or may produce repeated, frequent, or constant sounds or noise in excess of the maximum permissible sound levels stated in section 8.04.004.
- D. Before applying for a special event permit, the sponsor must present satisfactory proof of status as the sponsor of the special event.
- E. No less than sixty (60) days prior to the date of the special event, the sponsor shall apply for a special event permit by providing the following to the city administrator or his or her designee:
  - 1. Date, time, and duration of the special event;
  - 2. Nature or description of the special event;
  - 3. Location(s) of the special event;
  - 4. Estimated maximum decibel level and duration and time of sound or noise that will or may exceed the maximum permissible sound levels stated in section 8.04.004;
  - 5. Contact information of the sponsor prior to, during, and after the special event;
  - 6. Any other information requested by the city in connection with the special event that is relevant to the sound and noise expected to be produced at the special event; and
  - 7. A nonrefundable special event permit application fee.
- F. Once a special event permit is applied for, the city administrator or designee shall notify the city council. At which point, the city administrator or mayor may approve the application and issue the special event permit only if it is determined that the following conditions are or will be met:
  - 1. The sound or noise produced at the special event that exceeds the maximum permissible sound levels stated in section 8.04.004 shall have a duration of no more than two hours in one day;
  - 2. The sound or noise that exceeds the maximum permissible sound levels stated in section 8.04.004 shall not occur later than midnight on the date(s) of the special event;
  - 3. Issuance of the permit, including any special conditions contained therein, will not be detrimental to the health, safety, or welfare of the citizens of the city;
  - 4. The sound or noise produced at the special event shall not exceed 85 decibels.

- G. No less than 14 days prior to the special event for which a permit has been issued, and once a week for at least two weeks and a total of at least two publications, the person who received the permit shall have notice published in the official newspaper of the city informing the public of the following:
1. That the city has issued a permit allowing the noise level at the special event to exceed the level contained in the city's noise ordinance;
  2. The time, date, location, duration, and estimated maximum noise level of the special event;
  3. The times during which the noise level will exceed the level contained in the city's noise ordinance;
  4. The time when the noise level contained in the city's noise ordinance will cease to be exceeded;
  5. Contact information for the person who received the permit, including a phone number that will be answered during the special event; and
  6. Any other special conditions or information required by the city as a condition of the permit.
- H. A special event permit issued hereunder shall expire upon the earlier of:
1. The 13th day prior to the special event if the notice required by subsection (g) above was not published for the first time on or before the preceding day;
  2. The day before the special event if the second notice required by subsection (g) above was not published by that day;
  3. After two hours duration, continuous or interrupted, of noise or sound at the special event in excess of the maximum permissible sound levels stated in section 8.04.004;
  4. Midnight on the last day of the special event; or
  5. Revocation of the permit by the city due to violation of its terms or any special conditions contained in the permit.

(Ordinance XXX)