

**ORDINANCE \_\_\_\_\_**

**ORDINANCE AMENDING THE CITY CODE OF ORDINANCES RELATING SECTIONS OF CHAPTER 38, ARTICLE V “NOISE” INCLUDING SECTIONS AS SHOWN ON THE ATTACHED EXHIBIT “A”; PROVIDING FOR PENALTIES; AND PROVIDING AN EFFECTIVE DATE.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS that the amendments are adopted as Amendments to Chapter 38, Article V as shown on the attached Exhibit “A” in its Code of Ordinances.

Section 1. The Amendments are to be made to Chapter 38, Article V of the Code of Ordinances as shown in the attached Exhibit “A.” All insertions are made with blue colored letters and all deletions are shown in red.

Section 2: Other than as amended herein, all remaining sections of Chapter 38, Articles V, remain in full force and effect. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3: All ordinances or parts of ordinances in conflict with this ordinance are repealed to the extent of such conflict.

Section 4: The City Secretary shall publish the caption or a descriptive title of this ordinance one time within 10 days after final passage of the ordinance in a newspaper of general circulation in the City of Bay City.

Section 5: It is the intention of the City Council that this ordinance shall become a part of the Code of the City of Bay City, Texas, and it may be renumbered and codified therein accordingly, in the manner approved by the City Attorney. The Code of the City of Bay City, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

Section 6: Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor. In addition to any other remedy provided by law, the City and its officers shall have the right to enjoin any violation of this ordinance by injunction or civil remedy issued by a court of competent jurisdiction.

Section 7: That if any provision of this ordinance, or the application thereof to any person or circumstances, shall be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect the other provisions, or application thereof, of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Section 8: That the provisions of this ordinance shall become effective 10 days after final passage and approval by the City Council of the City of Bay City, Texas.

**PASSED AND APPROVED** on this 25th day of July, 2023.

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Robert K. Nelson, Mayor  
City of Bay City, Texas

ATTEST:

APPROVED AS TO FORM:

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Jeanna Thompson, City Secretary

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Anne Marie Odefey, City Attorney

| <b>Council Member:</b>         | <b>Voted Aye</b> | <b>Voted No</b> | <b>Absent</b> |
|--------------------------------|------------------|-----------------|---------------|
| Robert K. Nelson, Mayor        | _____            | _____           | _____         |
| Benjamin Flores                | _____            | _____           | _____         |
| James Folse                    | _____            | _____           | _____         |
| Brad Westmoreland              | _____            | _____           | _____         |
| Becca Sitz                     | _____            | _____           | _____         |
| Blayne Finlay<br>Mayor Pro Tem | _____            | _____           | _____         |

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Robert K. Nelson, Mayor  
City of Bay City, Texas

# EXHIBIT A

## **ARTICLE V. NOISE<sup>1</sup>**

### **Sec. 38-171. Unreasonable noise prohibited.**

It shall be unlawful for any person to make, permit or allow to be made, or cause to be made or continued, any loud, unnecessary or unusual noise or any noise which disturbs, injures or endangers the comfort, repose, health, peace, safety or welfare of others within the limits of the city, unless the making and continuing of such noise is necessary for the improvement, protection or preservation of property or the health, safety, life or limb of some person.

(Code 1985, § 17-1; Code 2000, § 38-171)

### **Sec. 38-172. Specific noises, acts declared loud and disturbing.**

- (a) The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter; provided however, that such enumeration shall not be construed to be exclusive of other noises:
- (1) The sounding of any horn or signal device on any automobile, motorcycle, bus, streetcar or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control, or if in motion only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for any unnecessary and unreasonable period of time.
  - (2) The playing of any radio, phonograph, ~~recording, or any~~ musical instrument, ~~or other electronic device~~ in such manner, or with such volume, ~~not to exceed eighty (80) dB(a) particularly during the hours between 11:00 p.m. and 7:00 a.m. as to create a noise such as is reasonably calculated to disturb a person of ordinary disposition under the same or similar circumstances residing in a dwelling or other type of residence in the vicinity. No stationary loudspeaker or amplifier shall be operated on any weekday between the hours of 11:00 p.m. and 7:00 a.m., and no such stationary loudspeaker or amplifier shall be operated at any time on Sunday between the hours of 7:00 a.m. and 1:00 p.m.~~
    - a) ~~In residential areas, noise shall not exceed eighty (80) dB(a) from 7 a.m. to 10 p.m. Noise shall not exceed eighty (80) dB(a) after 10 p.m. to 7 a.m.~~
    - b) ~~In and around non-residential property, noise shall not exceed eighty (80) dB(a):~~

~~Sunday – Thursday after 10 p.m. to 7:00 a.m. the following day.~~

~~Friday – Saturday after 12 midnight to 7:00 a.m. the following day.~~

~~Daytime 7:00 a.m. to 10 p.m. after 10 p.m. on a Sunday, Monday, Tuesday, Wednesday, or Thursday and before 7 a.m. on the following morning or after 12 a.m. and before 7 a.m. on a Saturday or Sunday.~~
  - (3) The use of an automobile, motorcycle, streetcar or vehicle so out of repair, so loaded or operated in such manner as to create loud or unnecessary noises such as spinning or squealing tires, grating, grinding, rattling or other noise.

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<sup>1</sup>State law reference(s)—Noise near residential areas, V.T.C.A., Penal Code § 42.01(c).

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- (4) The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of danger.
  - (5) The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor vehicle or boat engine except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
  - (6) The use of any mechanical device operated by compressed air, except pneumatic drills, unless the noise thereby created is effectively muffled and reduced.
  - (7) The erection (including excavation), demolition, alteration or repair of any building in a residential or business district other than between the hours of 6:00 a.m. and 8:00 p.m. Monday — Saturday, and all hours on Sunday. The city council or its designee may issue a written permit to exceed these hours in the case of urgent necessity in the interest of public health, safety, or welfare, which permit may be renewed for a period of three days or less while the emergency continues.
  - (8) The creation of any excessive noise on any street adjacent to any school, institution of learning, or court while the same are in session, or adjacent to any hospital, which unreasonably interferes with the working of such institution, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court street.
  - (9) The creation of a loud and excessive noise in connection with the loading or unloading of any vehicle or the opening and destruction of bales, boxes, crates and containers.
  - (10) The sounding of any bell or gong attached to any building or premises which is reasonably calculated to disturb a person of ordinary disposition if such person were in the vicinity thereof.
  - (11) The shouting and crying of peddlers, hawkers and vendors which disturbs the quiet and peace of the neighborhood.
  - (12) The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale of merchandise.
  - (13) The making, assisting in making, permitting, continuing, causing to be made or continued, or permitting 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:
    - a. In such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants; or
    - b. ~~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 that bass or other sounds are plainly audible in excess of eighty (80) dB(a) at the property line of source property or premises in which the amplification is located shall be presumed to be in violation of this section.~~
    - ~~C b.~~ At any time with louder volume than is necessary for convenient hearing for persons who are in ~~the a~~ vehicle ~~and 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 from a vehicle shall be presumed to be in violation of this section.

~~The operation of any such sound amplifier in such a manner as to be plainly audible at a distance of 50 feet 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 or other sounds are plainly audible at a distance of 50 feet 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.~~
  - (14) The use of an exhaust braking system on any motor vehicle (e.g., Jake Brake) at any time within the city limits.
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(15) Mufflers. No person shall operate a gasoline engine or any similar engine of any kind unless the engine shall be equipped with an exhaust muffler in effective working condition, which muffler shall be used whenever the engine is in operation so that there will be no excessive or unusual noise, or the engine shall be so constructed or designed that the noise is deadened as if such engine were equipped with a muffler. No person shall operate a motor vehicle upon any street unless such motor vehicle is equipped with a muffler at all times in good working order sufficient to prevent excessive or unusual noise.

- (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 of this chapter.
  - (3) It is an affirmative defense that the person producing, permitting, or allowing the sound is an event sponsored by the City of Bay City, is acting pursuant to a valid parade permit or has otherwise received permission from the City of Bay City to have an event with a variance from this Section.

~~Daytime hours shall mean the hours from 7:00 a.m. on one day and 10:00 p.m. the same day.~~

- (c) The term "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 one person from that owned, leased, or occupied by another person. With respect to shared occupancy properties, the term "property line" means 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.

Sec. 38.173 Tests and standards for noises.

Factors to consider: The standards which shall be considered in determining whether a violation of Sec. 38-172 exists shall include but shall not be limited to the following:

- (1) The volume of the noise.
- (2) The intensity of the noise.
- (3) Whether the nature of the noise is usual or unusual.
- (4) Whether the origin of the noise is natural or artificial.
- (5) The volume and intensity of the background noise, if any.
- (6) The proximity of the noise to residential sleeping facilities.
- (7) The nature of the area within which the noise emanates.
- (8) The density of inhabitation of the area within which the noise emanates.
- (9) The time of the day or night the noise occurs.
- (10) The duration of the noise.
- (11) Whether the noise is recurrent, intermittent or constant.
- (12) Whether the noise is produced by a commercial or noncommercial activity.

Section 2: Other than as amended herein, all remaining sections of Chapter 38 Article V, remain in full force and effect. All ordinances or parts of ordinances in conflict herewith are hereby repealed.