

ORDINANCE NO. 657

AN ORDINANCE AMENDING ARTICLE VI OF CHAPTER 13, "NUISANCES", OF THE CODE OF ORDINANCES OF THE CITY OF WEST COLUMBIA, TEXAS TO REGULATE NOISE LEVELS IN THE CITY OF WEST COULMBIA, TEXAS, RESIDENTIAL AND NON-RESIDENTIAL AREAS; CONTAINING DEFINITIONS; ESTABLISHING DECIBEL LIMITS, LOCATION AND TIME RESTRICTIONS ON NOISE; AUTHORIZING PERMITS AND FEES; MAKING LEGISLATIVE FINDINGS; DEFINING OFFENSES AND PROVIDING PENALTIES; MAKING OTHER PROVISIONS RELATED TO THE SUBJECT AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, the City Council has determined that the public, health, safety and welfare of the citizens of the citizens of West Columbia requires a more comprehensive regulation of noise in the City utilizing specific measures of noise; and

WHEREAS, the City Council finds and determines that the enactment of an ordinance regulating sound based on certain defined decibel limits, locations and times will promote the public health, safety and welfare of its citizens;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST COLUMBIA, TEXAS:

Section 1. That Chapter 13, "Nuisances", of the Code of Ordinances of the City of West Columbia, Texas, Article VI, is hereby amended to read as follows:

"Article VI

Noise Regulation

Sec. 13-150. - Definitions.

The following words shall have the meanings provided below:

Annual permit means a current and valid permit authorizing the use of sound amplification equipment at a specific location or upon a specific route for a one-year period from the date of permit issuance.

Daily permit means a current and valid permit authorizing the use of sound amplification equipment at a specific location or upon a specific route on a designated day.

Daytime hours means the hours between 8 a.m. on one day and 10 p.m. the same day.

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 (i) preventing or alleviating the physical trauma or substantial property damage threatened or caused by an emergency, (ii) restoring property to a safe condition following a fire, accident, or natural disaster, (iii) protecting persons or property from exposure to danger, or (iv) restoring public utilities.

Extended daily permit means a current and valid permit authorizing the use of sound amplification equipment at a specific location or upon a specific route at designated times for a period not to exceed five consecutive days.

Nighttime hours means the hours between 10:01 p.m. on one day and 7:59 a.m. the following day.

Nonresidential property means any real property not included in the definition of residential property as defined in this section. Without limitation, the term includes properties developed other than as residential properties, undeveloped properties, and properties devoted to public purposes, such as public streets and parks.

Permit means an annual permit, daily permit, or extended-daily permit.

Permittee means any person, partnership, corporation, firm, joint venture, limited liability company, association, organization or any other entity holding a permit issued pursuant to this article.

Plainly audible when describing a sound or noise means any amplified sound or noise that can be clearly heard by a person with normal hearing faculties such that a reasonable person would believe such sound or noise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this article. The term does not require the clear appreciation of specific words of speech or specific words of a song.

Property line means, with respect to single occupancy properties on the same side of a street, the line along the ground surface and its vertical extension that separates the real property occupied by one person from that occupied by another person. With respect to single occupancy properties on opposing sides of a street, the term means the curb line or line that separates the real property and the adjacent street.

With respect to shared occupancy properties the term means the imaginary line that represents the legal limits of occupancy of any person who occupies an apartment, condominium, hotel or motel room, office, or any other type of occupancy from that of other occupants.

Residential property means any real property developed and used for human habitation that contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, unless such premises are actually occupied and used primarily for purposes other than human habitation.

Sound nuisance means any sound that either exceeds the maximum permitted sound levels specified in section 13-155 of this Code, or for purposes of sections 13-153, 13-154, and 13-157 of this Code, otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.

Sec. 13-151. - General prohibitions.

(a) It is unlawful for any person to make, assist in making, permit, continue, cause to be made or continued, or permit the continuance of any loud, unnecessary, or unusual sound or noise that disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others. In determining whether a sound or noise is loud, unnecessary, or unusual, the following factors shall be considered:

- (1) The time of day;
- (2) The proximity of the source of the sound or noise to residential structures;
- (3) Whether the sound or noise is recurrent, intermittent, or constant;
- (4) The volume and intensity of the sound or noise;
- (5) Whether the sound or noise has been enhanced in volume or range by any type of electronic or mechanical means; and
- (6) Whether the sound or noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

(b) The acts enumerated in the following sections of this article, among others, are declared to be sound nuisances in violation of this article, but such enumeration shall not be deemed to be exclusive.

Sec. 13-152. - Exceptions.

(a) Notwithstanding any other provision to the contrary, the following exceptions shall not be violations of this article:

(1) Sound caused in the performance of emergency or public service work including public utility operations;

(2) Sound caused by the spectators and/or participants in an organized athletic or other extracurricular activities contest affiliated with the public schools or some other organized league play or practice or rehearsal for such contest before the hour of 11:00 p.m. Sunday through Thursday and before midnight on Friday or Saturday;

(3) Sound caused by or otherwise associated with public celebrations and/or activities associated with holidays such as the San Jacinto Day Festival; and

(4) Sound caused by the erection (including excavation),demolition, alteration or repair of any building between the hours of 7:00 a.m. and 9:00 p.m.

Sec. 13-153. - Noisy animals and birds.

The keeping of any animal or bird that causes or makes frequent or long and continued sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of ordinary, reasonable persons of normal sensibilities and ordinary tastes, habits, and modes of living who reside in the vicinity thereof is hereby prohibited and declared to be unlawful regardless of whether the sound so created by said animal or bird is within the permissible levels specified in section 13-155 of this Code.

Sec. 13-154. - Noisy vehicles generally.

It is unlawful to operate or cause to be operated any motor vehicle so out of repair or so loaded that it creates any loud and unreasonable grating, grinding, rattling, or squeaking sound regardless of whether the sound so created by the motor vehicle is within the permissible levels specified in section 13-155 of this Code.

Sec. 13-155. - Maximum permissible sound levels.

(a) In addition to the violations established by the preceding sections of this article, it is unlawful for any person to make, assist in making, permit, continue, cause to be made or continued, or permit the continuance of any sound at any location beyond the property lines of the property on which the sound is being generated that when

measured as provided in section 13-156 of this Code exceeds the applicable dB(A) level listed below for the property on which the sound is received:

- (1) Residential property:
 - a. 65 dB(A) during daytime hours.
 - b. 58 dB(A) during nighttime hours.
- (2) Nonresidential property: 68 dB(A) at all times.

Any sound that exceeds the dB(A) levels 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 sound source produces a sound that exceeds the dB(A) levels specified in this section shall be prima facie evidence of a sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this article.

(b) Regardless of the measurable dB(A) level established in this article and measured in a manner provided in section 13-156, the creation of any sound causing persons occupying or using any property other than the property upon which the sound is being generated to be aware of vibrations or resonance caused by the sound shall be prima facie evidence of a sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this article.

Sec. 13-156. - Method of sound measurement.

Whenever portions of this article prohibit sound over a certain decibel limit, measurement 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 National Standards Institute (A.N.S.I. S1.4-1984/85A). 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. Measurements of sound generated shall be taken from the property line of the nonresidential property or residential property where the sound is received towards the source of the sound.

Sec. 13-157. - Amplified sound in vehicles.

(a) It is 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, computer or other

sound source in a vehicle that, when operated disturbs the peace, quiet, and comfort of the neighboring inhabitants, or is plainly audible at a distance of 50 feet from the vehicle from which the sound is emanating.

(b) It is an affirmative defense to prosecution under this section that the sound source is a vehicle or trailer that is:

(1) A mobile sound stage or studio 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; and

(2) In compliance with all other provisions of this article, including but not limited to sections 13-158 and 13-159 of this Code, if applicable.

Sec. 13-158. - Permit for sound amplification equipment.

(a) It is unlawful for a person to use or cause to be used any loudspeaker, loudspeaker system, sound amplifier, or any other machine or device that produces, reproduces, or amplifies sound, either outside of a building or other enclosed structure or within a building or enclosed structure that causes the sounds that are produced, reproduced, or amplified to exceed the levels specified in section 13-155, when measured from the property line of the property where the sound is being received, without first obtaining a permit to do so.

(b) In no event shall the issuance of a permit authorize, allow, or otherwise permit the production, reproduction, or amplification of sound that exceeds 75 dB(A) when measured from the property line of the nearest receiving property. Permits shall be granted only for the amplification of music or human speech, or both; provided however, no permit shall be issued to an applicant who has:

(1) Had a permit revoked within the twelve-month period prior to the date of application; or

(2) Received two or more convictions or entered two or more pleas of guilty or nolo contendere, or any combination thereof, in return for a grant of deferred disposition for violations of this article within the 36 month period prior to the date of application.

(c) Each applicant desiring to obtain a permit shall apply on a form provided by the City and shall submit the following information:

(1) The date of the application and the date and hours for which the permit is requested, including the permit classification being requested;

(2) The name and address of the applicant;

(3) The name and address of the person who will have charge of the sound amplification equipment;

(4) The purpose for which the sound equipment will be used;

(5) The physical address and a description of the location or proposed route where the sound amplification equipment will be used;

(6) A description of the type of sound amplifying equipment to be used; and

(7) Any other information reasonably requested by the director for administration of this article.

Sec. 13-159. - Permit issuance; classification and terms.

(a) All permits issued pursuant to this article shall be issued according to the following permit classifications:

(1) Daily permits:

a. Valid for an authorized date and time between the hours of 8 a.m. and 10 p.m. as expressed on the face of the permit; and

b. Requires payment of the fee stated for this provision in the city fee schedule for the administrative costs of issuing the permit.

(2) Extended daily permits:

a. Valid for the authorized dates and times between the hours of 8 a.m. and 10 p.m. as expressed on the face of the permit; and

b. Requires payment of the fee stated for this provision in the city fee schedule for the administrative costs of issuing the permit.

(3) Annual permits:

a. Valid for the 14-hour period between the hours of 8 a.m. and 10 p.m. Sunday through Thursday; and the 15-hour period between the hours of 8 a.m. and 11 p.m. Friday and Saturday; and

b. Requires payment of the fee of thirty dollars (\$30) for the administrative costs of issuing the annual permit.

(b) If at the time of submitting the permit application an applicant is unable to pay the full amount of the applicable permit application fee pursuant to subsection (a),

the fee shall be reduced to that amount the applicant is able to pay, provided the applicant submits a sworn affidavit, on a form provided by the city attorney, containing the following information:

(1) A statement that the applicant is unable to pay the full amount of the fee for the permit; and

(2) A statement of the exact amount the applicant is able to pay for the permit fee at the time the application is delivered to the director.

Sec. 13-160. - Permit application review—Approval; denial and appeal.

(a) Following review of the application, the City Manager shall provide the applicant with written notification of the approval or denial of the requested permit.

(b) In addition to the provisions of subsection (b) of section 13-158 of this Code, the submission of any false information or a materially incomplete application, including but not limited to an applicant's failure to provide any information reasonably requested by the City Manager, shall be grounds for denial of the requested permit. In the event of denial, the applicant shall be given written notice of the basis for such action. An applicant may file an appeal of the denial of a requested permit by filing such appeal in writing with the City Manager not later than 15 days following the date of the City Manager's decision.

(c) If the reason for the denial of a requested permit is curable, the City Manager shall allow the applicant, upon a written request, to submit an amended application to cure the defect in lieu of filing an appeal. If the requested permit is again denied, the applicant shall still be entitled to file an appeal not later than 15 days following the date the City Manager's decision regarding the amended application. Notice of any denial shall comply with this Code and applicable state laws.

(d) An informal hearing shall be conducted by City Council who shall render a decision within 30 days from the date of the filing of the appeal. At the hearing, the burden shall be upon the applicant to demonstrate that the applicant has satisfied all requisites of this article, including all rules and regulations promulgated by the City Manager regarding sound amplification equipment permits, and is therefore in good standing to receive the requested permit.

Sec. 13-161. - Permit suspension; revocation.

(a) A permit may be suspended or revoked if, following notice and a hearing conducted by City Council, it is determined:

(1) The permit was issued in error;

(2) The applicant provided materially false or incomplete information on the permit application;

(3) The permittee failed to comply with all applicable provisions of this article; or

(4) The permittee or any agent or employee of the permittee responsible for the oversight or operation of the sound amplification equipment received two or more convictions or entered two or more pleas of guilty or nolo contendere, or any combination thereof, in return for a grant of deferred disposition within a 36 month period for violations of any provision of this article.

(b) City Council may take into consideration in the decision any written complaints received by the City Manager from surrounding property owners concerning a permittee's use of sound amplification equipment in violation of any provision of this article; provided however, such complaints shall not be the sole basis for the suspension or revocation of a permit.

Sec. 13-162. - Permit not transferable.

A permit is personal to the permittee to whom it is issued and may not be transferred or otherwise assigned. A permit shall constitute a privilege to which no property interests or property rights of any kind or character shall apply.

Sec. 13-163. - Display of permit.

A permittee shall at all times have in the permittee's possession and conspicuously display the permit authorizing the use of sound amplification equipment upon a designated route or at a physical address in such a manner that the permit is easily visible by law enforcement officers and members of the public. Any failure to display a permit shall create the presumption that no permit for the use of sound amplification equipment has been issued.

Sec. 13-164. - Change of information.

It shall be the duty of each permittee to submit to the City Manager any change in information required to be submitted pursuant to this article. Any change in information shall be submitted on the form prescribed by the City Manager within ten calendar days of any change.

Sec. 13-165. - Penalty.

Any person who violates any provision of this article is guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000.00). Upon a second or

subsequent conviction for a violation of this article within a twelve-month period, said person shall be fined not less than one hundred (\$100.00) nor more than two thousand dollars (\$2,000.00). Each day that any violation continues shall constitute a separate offense. To the extent that any conduct prohibited under this article also constitutes an offense under state law, then it shall be punishable as provided by state law.”

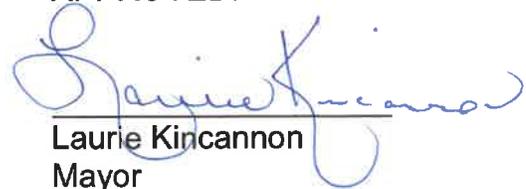
Section 2. Severability. The sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any part of this Ordinance shall be declared unconstitutional, illegal, or invalid by the final judgment or decree of any court of competent jurisdiction, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no wise affect, impair, or invalidate the remaining portion or portions thereof, but as to such remaining portion or portions, the same shall be and remain in full force and effect.

Section 3. Repeal. This ordinance is intended to be cumulative and shall not repeal any previous ordinance except to the extent that any provision of such ordinance is inconsistent and cannot be reconciled with any provision contained herein.

Section 4. Publication and effective date. This ordinance shall be effective immediately upon adoption and publication of this ordinance or a caption that summarizes the purpose of this ordinance and the penalty for violating this ordinance in every issue of the official newspaper for two days, or one issue of the newspaper if the official newspaper is a weekly paper, in accordance with Section 52.011 of the Texas Local Government Code.

PASSED, APPROVED AND ADOPTED this the 12th day of March, 2018.

APPROVED:


Laurie Kincannon
Mayor

ATTEST:


Kelli Kuban
City Secretary