

CITY OF HORSESHOE BAY

ORDINANCE NO ORD 080617C

NOISE ORDINANCE

AN ORDINANCE ADOPTING PROVISIONS RELATING TO NOISE AND SOUND LEVEL REGULATION IN THE CITY LIMITS OF THE CITY OF HORSESHOE BAY; PROVIDING FOR DEFINITIONS, GENERAL PROHIBITIONS, NOISY VEHICLES, AMPLIFIED SOUND, NOISY ANIMALS, MAXIMUM PERMISSIBLE SOUND LEVELS, METHOD OF SOUND MEASUREMENT, DEFENSES AND EXEMPTIONS; PROVIDING FOR PENALTIES INCLUDING A FINE NOT TO EXCEED TWO-HUNDRED DOLLARS (\$200) AND A CIVIL PENALTY NOT TO EXCEED TWO-HUNDRED (\$200) PER OFFENSE AND INJUNCTIVE RELIEF, AND PROVIDING FOR A REPEALER; SEVERABILITY; OPEN MEETINGS; AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Horseshoe Bay has determined that there is a need for establishing a basic level of regulations for the emission of noise and sound levels to help in protecting the users of property who are in close proximity to others who are creating noise or an excessive level of sound from the harmful effects and inconvenience of such noise and sounds and to help promote peacefulness within the City; and

WHEREAS, the City Council has received input from citizens of the City expressing a desire for such regulations, and

WHEREAS, the City Council has found that the following regulations will promote the health, safety and welfare of the citizens and persons within the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY, TEXAS:

I. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

II. NOISE AND SOUND LEVEL REGULATION

(a) Applicability

This ordinance shall apply within the corporate boundaries of the City of Horseshoe Bay, Texas.

(b) 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:

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 physical trauma or 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.

Nonresidential property/areas means 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.

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 is 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, tarp, 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, 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 one person from that 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.

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

Street means the roadway adjacent to a property. Streets are considered to be 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.

(c) General Prohibitions

(1) It shall be unlawful for any person to make, assist in making, continue, or cause to be made or continued any loud, unnecessary, or unusual noise that annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others. In determining whether a noise is loud, unnecessary, or unusual, the following factors shall be considered: time of day; proximity to residential properties/areas; whether the noise is recurrent, intermittent, or constant; its volume; whether the noise has been enhanced in volume by any type of electronic or mechanical means; and whether the noise is subject to being controlled without unreasonable effort or expense by the creator thereof. Any noise which can be measured at or exceeding 85dB(A) beyond the property line of the property on which the noise is being produced shall be prima facia evidence of a violation of this ordinance, although noise produced at a lesser level than 85dB(A) may be considered a violation if, in the opinion of investigating officers, the noise meets the other criteria listed in this section.

(2) It shall be unlawful for any person to pour a slab prior to 7 a.m. without first receiving a permit specifically allowing the person to pour the slab at that time. The request for a permit to pour a slab prior to 7 a.m. shall be made in the building permit application. The building official may consider all relevant facts when evaluating whether to grant or deny any request to pour a slab prior to 7 a.m.

(3) This ordinance shall not apply to any public utility, school district, or public work.

(d) Noisy Vehicles Generally

(1) The use of any motor vehicle that creates any loud, unreasonable or unusual noise or violates State of Texas regulations for equipment or emissions, including grating, grinding, rattling, or any other loud and unreasonable sound, is hereby prohibited and declared to be unlawful.

(2) No person shall operate an engine of any motor vehicle as defined by the Texas Transportation Code so as to brake or slow the same through the use of gears (commonly known as “engine braking”) or by any other method which produces any noise in addition to the normal operating engine noise.

(e) Amplified Sound

(1) 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:

- (A) in such a manner as to disturb the peace, quiet, and comfort of neighboring inhabitants, or
 - (B) 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.
- (2) All amplified sound audible at a distance of one hundred (100) feet or more from the source is only allowable between the following times:
- (A) Friday 12:00 noon to 11:00 p.m.
 - (B) Saturday 12:00 noon to 11:00 pm
 - (C) Sunday through Thursday 12:00 noon to 10:00 pm
 - (D) On Holiday weekdays; from 12:00 noon to 11:00 pm
- (3) It is an affirmative defense to prosecution under this section that the sound source is a motor vehicle and that (A) 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 (B) the use is in compliance with all other provisions in this article.

(f) Noisy Animals

- (1) 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 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.
- (2) In any prosecution for a violation of section II(f), 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.
- (3) In any prosecution for a violation of section II(f), the fact that any animal 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.

(g) Maximum Permissible Sound Levels.

(1) In addition to the violations established by the preceding sections of 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 is greater than reasonable and prudent.

(2) The generation of any sound that causes persons occupying or using any property other than the property upon which the sound is being generated to experience physically detectable sound, vibrations or resonance at a distance of one hundred and fifty (150) feet from the source of the sound, when said sound can be heard by complainant from outside the complainant's residence, or fifty (50) feet by complainant when inside the residence shall also be prima facie evidence of a sound that may unreasonably disturb, injure, or endanger the comfort, repose, health, peace, or safety of others in violation of this article.

(h) Music; Outdoor/Open Venues; Hour Restrictions

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 audible at a distance of one hundred (100) feet or more from the source is allowable only during the following hours:

- (1) Friday 12 Noon to 11 p.m.
- (2) Saturday 12 Noon to 11 p.m.
- (3) Sunday through Thursday 12:00 Noon to 10 p.m.
- (4) On Holiday Weekdays; from 12 noon to 11 p.m.

(i) 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:

- (1) 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.
- (2) The sound was produced by an authorized emergency vehicle.
- (3) The sound was generated:
 - (A) At a lawfully scheduled stadium event;
 - (B) By a parade and spectators and participants on the parade route during a lawful parade;

(C) By spectators and participants at a lawfully scheduled amphitheater event;

(D) By patrons and participants using cannons and gunfire during historical re-enactments for which a permit under the City's fireworks ordinance was obtained and the explosives were inspected by the fire marshal;

(E) By a pyrotechnic display that was inspected and approved by the fire marshal; or

(F) By spectators and participants of any outdoor event, fun run, race, festival, fiesta, or concert that was sponsored or cosponsored by the city.

(4) The sound was produced by emergency work.

(5) The sound was produced between the hours of 7 a.m. and 7 p.m. on any day by the erection, excavation, construction, or demolition of a building or structure, including the use of any necessary tools or equipment, which activity did not produce a sound greater than is reasonable and prudent to a reasonable observer when measured from the property line of the residential property where the sound is being received, except that use of tools and equipment to maintain or make ready golf courses and esplanades located within the City is permitted commencing at 6 a.m. each day.

(6) The sound was produced by aircraft, in flight or in operation at an airport or heli-facility, or railroad equipment in operation on railroad rights-of way.

(7) The sound was produced by operating or permitting the operation of any mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, lawnmower, or any other similar device used between the hours of 7:00 a.m. and 7:00 p.m.

(8) The sound was produced by church bells or chimes, or the Horseshoe Bay Property Owners' Association lighthouse,

(9) The sound was produced during daytime hours by activities conducted on public parks, public playgrounds, and public or private school grounds, including, but not limited to, school athletic, band and school entertainment practice or events.

(j) Exemptions

Airports, authorized helipads and aircraft are exempt from the provisions of this ordinance.

III. ENFORCEMENT

(a) Warning required prior to any enforcement of this ordinance. The offending party or parties must first be given a warning to cease the noise being created and said warning must be administered by a police officer or other duly authorized City of Horseshoe Bay enforcement official. If the offending party does not heed the warning and resumes the noise or another violation is committed within a 30 day period of said warning then enforcement may proceed.

(b) The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations.

(c) Any person who violates a provision of this ordinance shall be guilty of a misdemeanor, and upon conviction therefore shall be fined an amount not to exceed Two-hundred Dollars (\$200.00) for each offense, except as may be otherwise expressly provided by state law, or confinement in jail for a term not to exceed one year, or both fine and confinement. Each hour that a violation is permitted to exist shall constitute a separate offense.

(d) Nothing in this ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law, including but not limited to the following:

(1) injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance; and

(2) a civil penalty up to Two-hundred Dollars (\$200.00) a day when it is shown that the defendant was actually notified of the provisions of the ordinance and after receiving notice committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance; and

(3) other available relief.

IV. REPEALER

All ordinances, orders and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters ordered herein.

V. SEVERABILITY

If any section, subsection, or clause of this Ordinance or the application thereof to any person or circumstance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses and the application of such provision to other persons and circumstances shall nevertheless be valid and shall not be

