

## ORDINANCE 352

AN ORDINANCE REPEALING ORDINANCE <sup>349</sup>350; LOUD NOISES; PROVIDE FOR A PENALTY; PROVIDE FOR ENFORCEMENT BY THE POLICE DEPARTMENT; PROVIDE FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDE FOR A SEVERABILITY CLAUSE; AND PROVIDE FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEVEN POINTS, TEXAS: THAT ORDINANCE 352 REPEALING ORDINANCE 350 SHALL READ AS FOLLOWS:

### 1. – Definitions.

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

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

**dB(A)** shall mean the intensity of a sound expressed in decibels.

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

**Emergency work** shall mean any work performed for the purpose of (i) preventing or alleviating the 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.

**Nighttime hours** shall mean the hours between 10:01p.m. on one day and 6:59a.m. the following day.

**Nonresidential property** shall 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 developed other than as residential properties, properties that are undeveloped, and properties that are devoted to public purposes, such as public streets and parks.

**Property line** shall mean, 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 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.

**Residential property** shall mean 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** shall mean any sound that either exceeds the maximum permitted sound levels specified in Section 6 of this Code, or for purpose of sections 3, 4, and 5 of this Code, otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.

### 2. – General prohibitions.

(a) It shall be unlawful for any person to make, 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. No person shall make or cause to be made any loud and raucous noise in the City which is offensive to the ordinary sensibilities of the inhabitants of the City, which noise renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort. In determining whether a noise is loud, unnecessary, or unusual, the following factors shall be considered: time of day:

proximity to residential structures: whether the noise is recurrent, intermittent, or constant: the volume and intensity: whether the noise has been enhanced in volume or range by any type of electronic or mechanical means: and whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

**(b)** 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 that either exceeds the maximum permitted sound levels specified in section 6 of this code for **Nonresidential Property**, or for purpose of sections 3, 4, and 5 of this Code, otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.

**(c)** The acts enumerated in the following sections of this ordinance, among others, are declared to be loud, disturbing, and unnecessary noises in violation of this ordinance, but such enumeration shall not be deemed to be exclusive.

### **3. – Noisy vehicles generally.**

The use of any motor vehicle so out of repair, so loaded, or so noisy that it creates any loud and unreasonable grating, grinding, rattling, or any other loud and unreasonable sound is hereby prohibited and declared to be unlawful.

### **4. – 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 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: (i) in such a manner as to disturb the peace, quiet, and comfort of the neighbor inhabitants, or (ii) 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 from the point of origin, whether point of origin is on property or emanating from a vehicle, shall be presumed to be a violation of this section. The operation of any such amplifier in such a manner that bass sounds are plainly audible at a distance of 50 feet from the point of origin, whether it be property or premises in which the amplification is located shall be presumed to be a 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 (i) 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 (ii) the use is in compliance with all other provisions of this ordinance, including but not limited to section 8 of this Code, if applicable.

### **5. – Noisy animals and birds.**

The keeping of any animals or birds 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 as a sound nuisance in violation of this ordinance, regardless of whether the sound so created by said animal or bird is within the permissible sound levels.

#### **6. – Maximum permissible sound levels for Nonresidential property.**

In addition to the violations established by the preceding sections of this ordinance, no person shall conduct, permit, or allow any activity or sound source to produce a sound discernible at any location beyond the property lines of the property on which the sound is being generated that when measured as provided in section 7 of the Code exceeds the applicable dB(A) level listed below for the Nonresidential property on which the sound is received: **Nonresidential property: 68 dB (A) at all times.** Any sounds that exceeds the dB(A) levels set forth in this section under the conditions and measurement criteria set forth in this ordinance is a violation of this ordinance. 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 nuisance that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this ordinance. The generator of any sound of such a nature as to cause persons occupying or using any property other than the nonresidential property upon which the sound is being generated to be aware of sympathetic vibrations or resonance caused by the sound shall also 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 ordinance.

#### **7. – Method of sound measurement for Nonresidential property.**

Whenever portions of this chapter prohibits 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. 4-1984/85A or later model.) Measurements recorded shall be taken so as to provide a proper representation of the sound being measured. Measurements of sound generated shall be taken from the property line of the nonresidential property where the sound is received to the source of the sound.

#### **8. – Permit required for use of outdoor sound amplification equipment.**

(a) No person shall use or cause to be used any loudspeaker system, sound amplifier, or any other machine or device that produces, reproduces, or amplifies sound outside of building or other enclosed structures in a manner that exceeds the levels specified in section 6, Nonresidential property, when measured from the property where the sound is being received, without first obtaining a permit to do so. The permit shall be granted only for the amplification of music or human speech, or both. The permit:

- (1) May be obtained by making application to the City Secretary.
- (2) Requires payment of a \$30.00 fee for the administrative cost of issuing the permit.
- (3) Is valid for one 14 hour period between the hours of 8:00a.m. and 10:00p.m.
- (4) Shall not be issued to the same or any other person for the same location more than twice during any 30-day period. In the case of a sound truck, location shall relate to the area traversed by the truck in one day.
- (5) Shall not authorize, allow, or otherwise permit the production, reproduction, or amplification of sound that exceeds **75 dB(A)** when measured from property line of the nearest receiving property.

(b) The permit application required to be filed pursuant to this section shall contain the following information:

- (1) The date of the application and the date and hours for which the permit is requested.
- (2) The name and address of the applicant.
- (3) The name and address of the person who will have charge of the sound amplifying equipment.



- (4) The purpose for which the sound equipment will be used.
- (5) The address and a description of the location where the sound equipment will be used.
- (6) A description of the type of sound amplifying equipment to be used.

#### **9. – Defenses.**

The following defenses shall apply to any offense established in this ordinance:

- (a) The emission of any sound was for the purpose of alerting persons to the existence of an emergency, danger, or attempted crime.
- (b) The sound was produced by an authorized emergency vehicle.
- (c) The sound was produced by emergency work.
- (d) The sound was generated:
  - (1) At a lawfully scheduled stadium 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 amphitheater 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 Chief; or
  - (5) 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.
- (e) The sound was produced by the erection, excavation, construction, or demolition of any building or structure, including the use of any necessary tools or equipment, conducted between the hours of 7:00a.m. and 8:00p.m., which activity did not produce a sound exceeding **85 dB(A)** when measured from the property line of the residential property where the sound is being received.
- (f) The sound was produced by aircraft in flight or in operation at an airport, railroad equipment in operation on railroad rights-of-way.
- (g) 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 7:00a.m. and 8:00p.m., provide the device did not produce a sound exceeding **85 dB(A)** when measured from the property line of the nearest residential property where the sound is being received and was used for the maintenance or upkeep of the property on which it was operated.
- (h) The sound was generated as authorized under the terms of a permit issued under section 8 of this Code.
- (i) The sound was produced by the operation of any air conditioning unit that did not produce a sound exceeding **65 dB(A)** on residential property or **75 dB(A)** on nonresidential property, when measured at or near 15 feet from the air conditioning unit producing the sound being measured.
- (j) The sound was produced by church bells or church chimes when used as part of a religious observance or service during daytime hours, provided the sound did not cumulatively exceed five minutes duration in any one hour period.
- (k) 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 and school entertainment events.

**10. – Penalty for violation.**

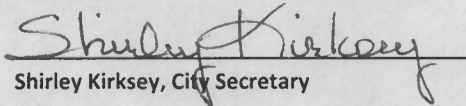
Any person who violates any provision of this ordinance is guilty of an offense and, upon conviction thereof, shall be punished by a fine of not more than \$500.00. Each hour or portion thereof in which any violation shall occur shall constitute a separate offense.

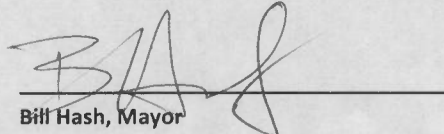
**11. – That all ordinances or part of ordinances herewith are, to the extent of such conflict, hereby repealed.**

**12. – That this ordinance shall take effect ten (10) calendar days from and after its passage and publication, as the law in such cases provides.**

PASSED AND APPROVED ON THIS 9<sup>TH</sup> DAY OF JUNE 2016

ATTEST:

  
Shirley Kirksey, City Secretary

  
Bill Hash, Mayor

