

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LAGO VISTA, TEXAS REPEALING AND AMENDING SECTION 8.3 OF THE CODE OF ORDINANCES OF THE CITY OF LAGO VISTA, TEXAS; PROHIBITING NOISES DISTURBING TO REASONABLE PERSONS; ESTABLISHING A PERMIT REQUIREMENT FOR CERTAIN NOISES; SETTING PERMISSIBLE DECIBEL LEVELS; ESTABLISHING PENALTIES PER VIOLATION; PROVIDING A REPEALING CLAUSE AND SEVERABILITY CLAUSE; AND SETTING AN EFFECTIVE DATE.

WHEREAS, it is within the police power of the City of Lago Vista, Texas (“the City”) to protect the tranquility, quiet enjoyment, and well-being of the community; and

WHEREAS, the City Council of the City of Lago Vista, Texas (“the City Council”) makes the following findings:

- (1) Inadequately controlled noise and sound vibrations disturb the tranquility, quiet enjoyment, and well-being of the community; harm the health, welfare, and safety of its inhabitants and visitors; interfere with the comfortable enjoyment of life and property; interfere with the well being, tranquility, and privacy of the home; and both cause and aggravate health problems, such as hearing loss, stress, high blood pressure, sleep loss, distraction and lost productivity.
- (2) Both the effective control and the elimination of loud noise are essential to the health and welfare of inhabitants and visitors, and to the conduct of the normal pursuits of life, including recreation, work, and communication.
- (3) Sound emanating from a motor vehicle which can be heard or which creates vibrations at some distance from the motor vehicle is often disturbing to the peace and tranquility of the community.
- (4) Construction, drilling, excavation and demolition work and the use of equipment for such work at nighttime is disturbing to the peace and tranquility of the community.
- (5) The use of sound equipment by outdoor music venues or by other persons in a manner which causes the sound to extend beyond the property line of the property on which the sound is produced is often disturbing to the peace and tranquility of the community.
- (6) Certain short-term easing of noise restrictions is essential to allow the construction and maintenance of structures, infrastructure, and other elements necessary for the physical and commercial vitality of the City.
- (7) The regulation of noise is necessary to protect public health and safety;

WHEREAS, the City Council finds it is in the public interest to regulate noise in the City of Lago Vista and its extraterritorial jurisdiction to minimize the exposure of citizens to excessive noise and to protect, promote and preserve the public health, comfort, convenience, safety and welfare ; and

WHEREAS, This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of Lago Vista through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA:

SECTION 1 The facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct, and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim.

SECTION 2 Section 8.03 of the Lago Vista Municipal Code is hereby amended to read as contained in this Ordinance.

SECTION 3 All ordinances and resolutions, or parts of ordinances and resolutions, in conflict with this Ordinance are hereby repealed, and are no longer of any force and effect.

SECTION 4 If any provision of this ordinance or its attachments or application thereof to any person or circumstance, shall be held invalid, 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 hereby declared to be severable.

SECTION 5 The Mayor is hereby authorized to sign this ordinance and the City Secretary to attest. This Ordinance shall become effective and be in full force and effect ten (10) days on and after publication in accordance with the provisions of the Charter of the City of Lago Vista.

Chapter 8.3

8.3-010 Definitions.

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

(a) Daytime hours shall mean the hours from 7:00 a.m. on one day and 10:00 p.m. the same day for residential properties or areas and 6: 00 a.m. on one day and midnight on the same day for nonresidential properties or areas.

- (b) dB(A) shall mean the intensity of a sound expressed in decibels.
- (c) Emergency shall mean any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss that demands immediate action.
- (d) 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.
- (e) Nighttime hours shall mean the hours between 10:01 p.m. on one day and 6:59 a.m. the following day for residential properties or areas and 12:01 a.m. and 5:59 a.m. the same day for nonresidential properties or areas.
- (f) Nonresidential property/areas 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 zoned other than as residential property, and properties that are devoted to public purposes, such as public parks.
- (g) 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.
- (h) 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 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.
- (i) Residential property/ areas shall mean any real property zoned R-1, R-2, or R-4.
- (j) 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.

8.3-020. 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. In determining whether a noise is loud, unnecessary, or unusual, the following factors shall be considered: time of day; proximity to residential properties/areas as defined above; 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 8.3-060 of this Code or, for purposes of sections 8.3-030, 8.3-040, and 8.3-050 of this Code, otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.

(c) It shall be unlawful for any person to pour a slab, demolish a building, or utilize any power tools for commercial or industrial purposes before 7 a.m. or after 10 p.m. on any day without having been issued a permit for such activity to be conducted on the property upon which the pouring, demolition or use of tools is to take place. Such permit will specify the dates and times during which the work is authorized to occur. This prohibition shall not apply to emergency work which may be verbally authorized by the City Manager or the Mayor.

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

(e) This ordinance shall not apply to any Law enforcement personnel, equipment or activity nor to any public utility or public works personnel, equipment or activity while in the performance of their official duties.

8.3-030. Noisy vehicles generally.

(a) The use of any motor vehicle so out of repair or so extra loaded, that it creates any loud and unreasonable or unusual, (that is, not standard equipment for the type vehicle, or which violates state of Texas regulations for equipment or emissions), grating, grinding, rattling, or any other loud and unreasonable sound is hereby prohibited and declared to be unlawful.

(b) 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 "Jake braking") or by any other method which produces any noise in addition to the normal operating engine noise.

(c) No person shall operate or allow an engine of any sort of motor vehicle, except emergency equipment or vehicles then located at a permitted public event or parade, to idle for more than one (1) hour.

8.3-040. 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: (i) in such a manner as to disturb the peace, quiet, and comfort of the neighboring 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 or more from a vehicle shall be presumed to be 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 violation of this section.

(b) Amplified sound emanating from any horn, instrument, player, radio, phonograph, or other amplification device or attachment on the public street or other public or private place during nighttime hours is prohibited.

(c) 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 article.

8.3-050. Noisy animals and birds.

(a) 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 as a sound nuisance in violation of this chapter, regardless of whether the sound so created by said animal or bird is within the permissible levels specified in section 8.3-060 of this Code.

(b) In any prosecution for a violation of this section 8.3-050, the fact that any loud animal noise which disturbed any person and which occurs in residential areas either:

(1) during nighttime hours; or

(2) when none of the residents who reside at the place where the animal or bird is being kept are at home:

shall create a rebuttable presumption that such noise was in violation of this article.

(c) In any prosecution for a violation of this section 8.3-050, 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.

8.3-060. Maximum permissible sound levels.

(a) In addition to the violations established by the preceding sections of this chapter, no person shall 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 when measured as provided in Section 8.3-070 of this Code exceeds 80 dB(A) during daytime hours and 70 dB(A) during nighttime hours for the respective areas described above. Any sound that exceeds the dB(A) levels set forth in this section under the conditions and measurement criteria set forth in this chapter is a violation of this chapter. 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 chapter.

(b) Regardless of the measurable dB(A) level established above and measured as provided in section 8.3-070, below, the generator of any sound of such a nature as to cause 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 fifty (50') feet from the source of the sound (measured as set out below) 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 chapter.

8.3-070. Method of sound measurement.

Whenever portions of this chapter 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 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 (50') feet 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 streets curb line opposite the said building of the nearest public street to the property where the sound is generated.

8.3-080. Permit required for use of outdoor sound amplification equipment.

(a) No person shall use or cause to be used any loudspeaker, loudspeaker system, sound amplifier, or any other machine or device that produces, reproduces, or amplifies sound outside of buildings or other enclosed structures in a manner that exceeds the levels specified in section 8.3-060, without first obtaining a permit to do so no permit is required for any use not exceeding the said permissible levels.

The permit:

Shall be granted only for the amplification of music or human speech, or both.

The permit:

May be obtained by making application to the director of the city department so designated by the city manager.

Requires payment of a \$10.00 fee for the administrative costs of issuing the permit or a sworn statement of inability to pay the fee.

Is valid for a specifically requested and approved period between the hours of 8:00 a.m. and 10:00 p.m. in residential areas or between 7:00 a.m. and 12:00 midnight in non residential areas.

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. For special events which will take place over a two or three day time period in a City or POA park, the City Manager may approve a special permit to accommodate the entire event period in one permit.

Shall specify the maximum sound level permitted.

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

The date of the application and the date and hours for which the permit is requested.

The name and address of the applicant.

The name and address of the person who will have charge of the sound amplifying equipment.

The address and a description of the location where the sound equipment will be used.

A description of the type of sound amplifying equipment to be used.

The permit hereby required is not required for the purpose of regulating speech which is protected speech or to conflict with any law of any superior governmental authority.

Any regulation hereof that is in conflict with any such right or authority is hereby declared to be inoperative and severable from the other regulations herein.

8.3-090. Defenses.

The following defenses shall apply to any offense established in this chapter, 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.

(b) The sound was produced by an authorized emergency vehicle.

(c) The sound was produced by emergency work or an emergency situation.

(d) The sound was generated:

At a lawfully scheduled stadium event;

By a parade and / or spectators and participants on the parade route during a lawful parade;

By spectators and participants at lawfully scheduled amphitheater, ball field or stadium event.

By patrons and participants using cannons and gunfire during historical battle re-enactments for which a pyrotechnic permit was obtained and the explosives were inspected by the fire marshal;

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

By spectators and participants of any outdoor event, fun run, race, festival, fiesta, or concert that was sponsored or cosponsored 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, 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. This defense shall not apply to aircraft maintenance operations which require the operation of the aircraft engine for testing and which exceed allowable sound levels before 7:00 AM or after 10:00 PM. Jet engines being tested are restricted to “pulses” of less than two minutes duration.

(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 7:00 a.m. and 9:00 p.m. when the sound is being produced for the maintenance or upkeep of the property on which it was operated. Golf course mowing and dry stack boat storage operations are permitted to begin at 6:00 a.m.

(h) The sound was generated as authorized under the terms of a permit issued under section 8.3-080 of this Code.

(i) The sound was produced by church bells or church chimes when used during daytime hours for the zone in which the church is located.

(j) 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.

8.3-010. Penalty.

(a) A person commits an offense if the person makes noise in violation of a provision of this Ordinance

(b) An offense under this Ordinance is a Class C misdemeanor, punishable by a fine of not less than \$100.00 nor more than \$2,000.00, or, if the person has previously been convicted of a violation under this Chapter, by a fine of not less than \$200.00 nor more than \$2,000.00, as is consistent with the portion of this Code governing penalties for health and safety violations.

(c) Each occurrence of a violation, or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.

(d) A violation of this Ordinance is a nuisance. The prosecution of an offense under this Chapter does not limit the City’s right to abate the nuisance, including the use of injunctive or other civil relief.

(e) No provision of this Ordinance shall be construed to impair any common law or statutory cause of action, or legal remedy there from, of any person, for injury or damage arising from any violation of this Ordinance or from other law.

AND, IT IS SO ORDERED.

PASSED AND APPROVED THIS -- DAY OF -----, 2007.

THE CITY OF LAGO VISTA, TEXAS

ATTEST:

Randy Kruger, Mayor

Christina Buckner, City Secretary

On a motion by Council Member _____, seconded by Council Member _____, the above and foregoing instrument was passed and approved.

DRAFT