

ORDINANCE NO.

AN ORDINANCE AMENDING ORDINANCE NO. 291-88-10-11 OF THE CITY OF PFLUGERVILLE CODE OF ORDINANCES TITLE IX GENERAL REGULATIONS, CHAPTER 94, TITLED NOISE CONTROL, BY REDUCING THE MAXIMUM DECIBEL LEVELS, ADDING TEMPORARY PERMIT PROCEDURES, REVOCATION OF PERMIT AND ENFORCEMENT PROVISIONS, AND AMENDING CORRESPONDING DEFINITIONS; REPLACING ALL ORDINANCES IN CONFLICT; CONTAINING SEVERABILITY AND REPEALER CLAUSES; PROVIDING FOR A PENALTY FOR A VIOLATION OF CHAPTER 94, AS A CLASS C MISDEMEANOR AND A FINE IN AN AMOUNT NOT TO EXCEED \$2,000.00; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City Council originally approved and adopted the City's Noise Control Ordinance No. 291-88-10-11 on October 18, 1988; and

WHEREAS, the City Council has determined that it is necessary to update and amend the Noise Control Ordinance to ensure realization of its stated purposes and its compliance with applicable State law; and

WHEREAS, the City Council has, within its police powers, the right to protect the tranquility, quiet enjoyment, and well-being of the community and is further authorized to define and prohibit any nuisance within the limits of the City pursuant to Texas Local Government Code, Chapter 217, Section 217.042; and

WHEREAS, the City Council has determined that certain Noise Disturbances, as defined herein, endanger, injure or unreasonably disturb or interfere with the peace, comfort, and repose of reasonable neighboring persons of ordinary sensibilities, and the general health, safety and welfare of the community and the citizens therein; and

WHEREAS, the City Council further finds that certain Noise Disturbances at levels exceeding maximum decibel levels established herein are increasingly damaging to the public health, safety and welfare of the community, thereby constituting a nuisance under Texas Local Government Code, Chapter 217 and being enforceable as police regulations governing public health under Texas Local Government Code, Chapter 54, Section 54.001; and

WHEREAS, the City Council also acknowledges that certain activities that are necessary, beneficial and/or desirable to the Citizens of Pflugerville for social, recreational, entertainment or other purposes may occasion excess noise associated with such activities, which can be properly regulated and mitigated through a permitting procedure established to address the same; and

WHEREAS, the City Council has determined that reducing the maximum decibel levels, adding temporary permit procedures, revocation of permit and enforcement

provisions, adding and amending corresponding definitions, and making other administrative revisions is in the best interest of the public health, safety and welfare and, further, that amending Chapter 94 Noise Control of the Code of Ordinances is prudent and necessary; and

WHEREAS, the City has complied with all conditions precedent necessary to take this action, has properly noticed and conducted all public hearings and public meetings pursuant to the Texas Local Government Code and Texas Government Code, as applicable.

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

Section I. Findings.

That the foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes and findings of fact.

Section II.

That the Code of Ordinances of the City of Pflugerville, Texas, is hereby amended by amending Chapter 94, Noise Control, in its entirety to read as amended in **Exhibit A**, attached hereto and incorporated herein for all purposes.

Section III.

Severability.

If any provision of this Ordinance is illegal, invalid, or unenforceable under present or future laws, the remainder of this Ordinance will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this Ordinance.

Section IV.

Repealer.

This ordinance shall be cumulative of all other ordinances, resolutions or acts of the City of Pflugerville, and this ordinance shall not operate to repeal or affect any other ordinances of the City of Pflugerville except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, are hereby repealed.

Section V.

Penalty.

That a violation of this Ordinance shall be an offense punishable upon conviction as prescribed in Chapter 94, Section 94.11 of this Code of Ordinances.

Section VI.

Effective Date.

This Ordinance will take effect upon its adoption by the City Council and publication of the caption hereof in accordance with Section 3.15(d) of the City Charter.

PASSED AND APPROVED this _____ day of _____, 2019.

CITY OF PFLUGERVILLE, TEXAS

By: _____
Victor Gonzales, Mayor

ATTEST:

Karen Thompson, City Secretary

APPROVED AS TO FORM:

Charles E. Zech, City Attorney
DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

EXHIBIT A
CHAPTER 94: NOISE CONTROL

CHAPTER 94: NOISE CONTROL

§ 94.01 SHORT TITLE.

This chapter shall be known and may be cited as the Noise Control Ordinance of the City of Pflugerville, Texas.

(Ord. 291-88-10-11, passed 10-11-88)

§ 94.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Terms not defined herein shall be construed in accordance with customary usage.

A-WEIGHTED SOUND LEVEL means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

BUILDING OFFICIAL means the City of Pflugerville's Building Official or the Official's designee in their absence.

CHIEF OF POLICE means the Chief of Police of the City of Pflugerville or the Chief's designee.

CITY MANAGER means the City Manager of the City of Pflugerville or the City Manager's designee in their absence.

CONSTRUCTION. Any activities involving site preparation, land disturbance, assembly, erection, substantial repair, renovation or alteration, staging of materials, operation of heavy equipment, or similar actions, excluding Demolition, for or of public or private right-of-ways or properties, structures, utilities, other site improvements, or similar properties~~y~~.

DAYTIME. Means the times between seven (7) o'clock a.m. and ten (10) o'clock p.m. Sunday through Thursday, and the times between seven (7) o'clock a.m. and twelve (12) o'clock a.m. Friday and Saturday.

DECIBEL DB(A). Sound pressure level as measured by a sound level meter using the "A" weighting network and the slow meter response as specified by the American National Standards Institute (ANSI).

DEMOLITION. Any dismantling, intentional destruction, or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

EMERGENCY. Any occurrence or set of circumstances involving: (1) actual, ~~or~~ imminent or perceived physical trauma or property damage; or (2) the restoration of essential services and/or preservation of the public health, safety and welfare by jurisdictional authorities or public utility providers, both of which demands immediate action.

EMERGENCY WORK. ~~Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an Emergency.~~ Means any activities necessary to respond to and address an Emergency.

LEGAL HOLIDAY. ~~A day officially designated by the governing body of the city as an official city holiday.~~

MOTOR VEHICLE. ~~Any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck trailers, semitrailers, campers, go-carts, snowmobiles, amphibious craft on land, dune buggies, or racing vehicles, but not including Motorcycles.~~ Means any vehicle that is propelled or drawn on land by an engine or motor.

MOTORCYCLE. ~~An unenclosed Motor Vehicle having a saddle for the use of the operator and two or three wheels in contact with the ground, including, but not limited to, motor scooters and minibikes.~~

MUSIC VENUE. Means any commercial establishment in which sound equipment, is used for a concert, musical performance or other similar entertainment.

NIGHTTIME. Means the hours between ten (10) o'clock p.m. and seven (7) o'clock a.m. Sunday through Thursday and the hours between twelve (12) o'clock a.m. and seven (7) o'clock a.m. Friday and Saturday.

NOISE DISTURBANCE. Any sound which:

- (1) ~~Endangers, or injures~~ or unreasonably disturbs or interferes with the peace, comfort, and repose of reasonable neighboring persons of ordinary sensibilities, and/or the safety, y or health or welfare of humans ~~or animals~~;
- ~~(2) Annoys or disturbs a reasonable Person of normal sensitivities;~~
- ~~(3)~~ (32) Endangers or injures personal or real property;
- ~~(4)~~ (43) Creates a vibration that can be felt at ~~a distance greater than 30 feet from the source~~ the Real Property Boundary by a reasonable person of ordinary sensibilities; or
- ~~(5)~~ (54) Exceeds the sound level of 85db(A) or such lower sound levels established in this Chapter.

PERSON. ~~Any individual, association, partnership or corporation, and includes any officer, employee, department, agency or instrumentality of a state, or any political subdivision of a state.~~ Means any person, firm, association, organization, partnership, business, trust, corporation, company or other legal entity of any form.

~~PLAINLY AUDIBLE. Any sound that can be detected by a Person using his or her unaided hearing faculties. For example, while investigating a noise complaint the officer hears a song coming from a vehicle's sound system. The officer does not need to identify 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.~~

~~POWERED MODEL VEHICLE. Any self-propelled airborne, waterborne, or landborne plane, vessel, or vehicle which is not designated to carry Persons, including, but not limited to, any model airplane, boat, car, or rocket.~~

~~PROPERTY LINE. 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 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.~~

PUBLIC RIGHT-OF-WAY. Means a strip of land acquired by prescription, reservation, dedication, purchase, condemnation or otherwise and is used as a public right-of-way. The right-of-way normally incorporates the roadway, curbs, parking strips, sidewalks, lighting and drainage facilities, other utilities, and may include special features (required by topography) such as grade separation, landscape areas, viaducts or bridges. Any street, avenue, boulevard, highway, sidewalk, alley, or similar place, which is owned or controlled by a governmental entity.

~~PUBLIC SPACE. Any real property, or structures thereon, which is owned or controlled by a governmental entity.~~

~~REAL PROPERTY BOUNDARY. A line along the ground's surface which separates the real property owned by one Person from that owned by another Person. Means either:~~

- (1) The real property line, including its vertical extension, that separates one parcel of real property from another, or
- (2) The vertical and horizontal boundaries of each unit of a multi-unit building, which is under separate ownership or tenancy.

RESIDENTIAL AREA means any real property zoned for residential use in accordance with the City's zoning ordinance, all other real property used for residential purposes including, but not limited to, single-family, two-family, or multi-family land uses, City parks, and public rights-of-way abutting any such property.

SOUND EQUIPMENT means a loud speaker, public address system, amplification system, musical instrument, radio, CD player, or other sound producing device.

SOUND LEVEL means the instantaneous sound pressure level measured in decibels obtained by the use of a sound level meter set for A-weighting on slow integration speed, unless otherwise noted.

SOUND LEVEL METER means an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting network used to measure sound

[pressure levels conforming to Type 1 or Type 2 standards as specified in the latest version of the American National Standards Institute specifications for sound level meters \(ANSI Standard S1.4-1983\).](#)

~~WEEKDAY. Any day, Monday through Friday, which is not a Legal Holiday.~~

(Ord. 291-88-10-11, passed 10-11-88)

§ 94.03 NOISE DISTURBANCE.

(A) No Person ~~shall~~may make, continue, or cause to be made or continued, any Noise Disturbance [defined or identified in this Chapter.](#)

~~(B) — In addition to those acts declared to be violations of this chapter in subsection (A), above, the following acts, and the causing thereof, are prohibited by this chapter:~~

~~(1) — Operating, playing, or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device which produces, reproduces, or amplifies sound:~~

~~(a) — Between the hours of 10:00 p.m. and 7:00 a.m. the following day in such a manner as to create a Noise Disturbance across a Real Property Boundary; or~~

~~(b) — In such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for a Person who is within the property or premises and who are voluntary listeners.~~

~~(2) — Using or operating for any purpose any loudspeaker, public address system, or similar device:~~

~~(a) — In such a manner that the sound therefrom creates a Noise Disturbance across a Real Property Boundary; or~~

~~(b) — Between the hours of 10:00 p.m. and 7:00 a.m. the following day on a Public Right-of-Way or Public Space.~~

~~(3) — Owning, possessing, or harboring any animal which frequently, or for continued duration, howls, barks, meows, squawks, crawls, or makes other sounds which create Noise Disturbance across a residential Real Property Boundary.~~

~~(4) — Loading, unloading, opening, closing, or otherwise handling boxes, crates, containers, building materials, garbage cans, or similar objects between the hours of 10:00 p.m. and 7:00 a.m. the following day in such a manner as to cause a Noise Disturbance across a residential Real Property Boundary.~~

~~(5) — Operating, or permitting the operation of, any tools or equipment used in Construction, drilling, or Demolition work between sunset and 7:00 a.m. the following day in such a manner that the sound therefrom creates a Noise Disturbance across a residential Real Property Boundary, except:~~

~~(a) — For Emergency Work by public service entities; or~~

~~(b) — Prior approval to pour concrete has been granted by the Building Official.~~

~~(6) — Repairing, rebuilding, modifying, or testing any Motor Vehicle, Motorcycle, or motorboat in such a manner as to cause a Noise Disturbance across a residential Real Property Boundary.~~

~~(7) — Using or firing explosives, firearms, or similar devices which create impulsive sound, so as to cause a Noise Disturbance across a Real Property Boundary or on a Public Space or Public Right-of-Way.~~

~~(8) — Operating, or permitting the operation of, Powered Model Vehicles so as to create a Noise Disturbance across a residential Real Property Boundary or in a Public Space between the hours of 10:00 p.m. and 7:00 a.m. the following day.~~

~~(9) — Sounding, or permitting the sounding of, any signal from any stationary bell, chime, siren, whistle, or similar device intended primarily for nonemergency purposes from any place for more than one minute in any hourly period.~~

~~(10) — Intentionally sounding, or permitting the sounding outdoors, of any fire, burglar, or civil defense alarm, siren, whistle, or similar stationary Emergency signaling device, except for Emergency purposes or for testing.~~

~~(11) — Operating, or permitting the operation of, any mechanically powered saw, sander, drill, grinder, lawn or garden tool, blower, or similar device used outdoors between the hours of 10:00 p.m. and 7:00 a.m. the following day, so as to cause a Noise Disturbance across a residential Real Property Boundary.~~

~~(12) — Operating, or permitting the operation of, any Motor Vehicle for a period longer than ten minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion, on a Public Right of Way or Public Space within 150 feet of a residential Real Property Boundary, between the hours of 10:00 p.m. and 7:00 a.m. the following day.~~

~~(13) — The operation of any amplified sound in such a manner as to be Plainly Audible from a moving or stationary vehicle at a distance of 30 feet from the vehicle at any time. The operator (driver) or the Person in control of a stationary vehicle from which the sound is produced is presumed to be the Person who committed the violation.~~

(B) *Included noises.* This section applies to, but is not limited to, Noise Disturbances in the form of: barking dogs or other noise producing animals; car alarms, vehicle exhaust, engine braking systems, radios, boom boxes, musical instruments, and other Sound Equipment or devices

which reproduce or amplify sound; the cries of peddlers, hawkers and vendors; any noise disturbance during nighttime in a residential area which can be heard at or beyond the real property boundary line of the premises from which the noise disturbance is originating; and noise disturbances from the shooting of a gun or fireworks, including such noise disturbance created at Sports Shooting Ranges, as defined in Section 250.001 of the Texas Local Government Code, where said noise disturbance is audible in residential areas.

- (C) Noise producing vibrations from vehicles. No person shall cause, suffer, allow or permit operation of a radio, tape or CD player, or other electronic or mechanical sound-making device from a motor vehicle in a manner which emits sound audible on a public right-of-way, street, or highway, to the human ear of a person with average and normal hearing and sensibilities, at a distance of thirty (30') or more feet from the motor vehicle or which causes a person with normal sensibilities at that distance to be aware of a vibration accompanying the sound. It shall be presumed that the driver of any such vehicle is the operator of the sound-making device(s).
- (D) Noise producing vibrations from other locations. No person shall cause, suffer, allow or permit operation of a radio, tape or CD player, or other Sound Equipment, or electronic or mechanical sound-making device in a manner which emits sound audible on a public right-of-way, street, or highway, to the human ear of a person with average and normal hearing, at the Real Property Boundary or which causes a person at that location to be aware of a vibration accompanying the sound.
- (E) Construction. Operating, or permitting the operation of, any tools or equipment used in construction, drilling, or demolition work may not occur between 6:00 p.m. and 7:00 a.m. the following day, November 1st through March 31st, or between 8:00p.m. and 7:00 a.m. the following day, April 1st through October 31st, in such a manner that the sound therefrom creates a Noise Disturbance across a residential Real Property Boundary.

(Ord. 291-88-10-11, passed 10-11-88; Am. Ord. 722-03-11-11, passed 11-11-03; Ord. 793-05-07-26, passed 7-26-05) Penalty, see §10.99

§ 94.04 AFFIRMATIVE DEFENSESEXCEPTIONS.

~~The provisions of § 94.03 and § 94.05 shall not apply to the emission of sound.~~The following activities are affirmative defenses to prosecution under the provisions of this Chapter:

- (A) For the purpose of alerting Persons to the existence of an Emergency; or
- (B) In the performance of law enforcement activity or Emergency Work; or
- (C) By stationary bells or chimes used in conjunction with places of religious worship; or
- (D) By events held on public school grounds authorized by school officials; or
- (E) By events authorized by the City Council, City Manager or Police Chief which are conducted on public property; ~~or~~

- (F) Operation of an airplane, helicopter or similar craft in accordance with applicable federal, state and local law; or
- (G) In the performance of an event or work authorized under a permit issued under this Chapter; or
- (H) Noise emanating from an organized sporting event, including from spectators therein; or
- (I) Sound generated by lawn or landscaping equipment in good working order operating during the Daytime.

(Ord. 291-88-10-11, passed 10-11-88)

§ 94.05 MAXIMUM SOUND LEVELS/PUBLIC NUISANCE DECLARED.

- (A) Maximum decibel levels/Public Nuisance. No person shall cause, suffer, allow, or permit any of the following acts, which are hereby declared to be public nuisances and are subject to enhanced penalties under this Chapter as violations of the public health, safety and welfare of the community.
 - (1) The intentional, knowingly or recklessly authorizing, allowing, making or causing of a noise disturbance which exceeds 70 decibels on any property during the daytime or 65 decibels during the nighttime in residential areas and all abutting public rights-of-way; or
 - (2) The intentional, knowingly, or recklessly authorizing, allowing, making or causing of a noise disturbance which exceeds 85 decibels on any property or within the public right-of-way in a non-residential area.

~~(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 by 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 exceeds 85db.~~

~~(B)—Any sound that exceeds 85db(A) level set forth in this section under the measurement criteria set forth in this section is a violation of this chapter. Evidence that an activity or sound source produces a sound that exceeds the 85db(A) level of 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.~~

~~(C)—Regardless of the measurable db(A) level established and measured as provided above, 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 thirty (30') feet from the source of the sound, 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.~~

(Ord. 836-06-07-25, passed 7-25-06)

§ 94.06 METHOD OF SOUND MEASUREMENT.

Measurements must be taken so as to provide a proper representation of the sound being measured. Meters must be positioned so as not to create any unnatural enhancement or diminution of the measured sound. For purposes of Section 94.05 above, mMeasurements of sound generated must be taken from the ~~Property Line~~ Real Property Boundary where the sound is generated and taken toward the source of the sound.

(Ord. 836-06-07-25, passed 7-25-06)

§ 94.07 TEMPORARY PERMIT PROCEDURE.

(A) Eligibility to apply for temporary permits. The following persons or entities may apply for a temporary permit to create or allow a noise which would otherwise be prohibited by this Chapter:

- (1) A person or entity seeking a permit for the noise generating construction activities prohibited without such permit in Section 94.03;
- (2) A person or entity which has applied for a special event permit from the City and seeks to be allowed to use sound equipment creating noise which exceeds the decibel levels permitted by this Chapter or a Noise Disturbance during the special event; and
- (3) A music venue located on non-residential property and the location at which the sound will be generated is more than 200 feet from any residential property line, which seeks to use sound equipment outdoors creating noise which exceeds the decibel levels permitted by this Chapter or a Noise Disturbance.

(B) Application. A person seeking a permit under this Section shall complete and file a written application for a permit with the Building Official on the form provided by the Building Official and pay a fee of \$50.00 to cover expenses of processing the application, or such amended amount as may be established by ordinance. Such application shall be submitted at least ten (10) business days prior to the date on which the noise will commence. An application for permit shall include:

- (1) The name, address, and telephone number of the applicant. If the applicant is a business, the application shall be filled out by the business owner or duly authorized agent of the business with property owner's consent, and shall list the name, address, and telephone number of the business, the responsible owner of the business, and the operator of the business, if different;

- (2) The nature and location of the noise source or event for which the application is made;
- (3) The time during which the noise will be generated and the maximum level of noise that will occur;
- (4) A signed statement that the applicant has obtained a copy of this Chapter and related rules and agrees to comply with this Chapter, the related rules provided, and the terms and conditions of a permit issued to the applicant;
- (5) The reason for which the permit is requested, including the consequences that will result to the applicant, his/her client, or the public if the permit is not granted as determined in (D) below; and
- (6) A description of noise control measures to be implemented for the applicant to minimize noise and the impacts occurring therefrom and the schedule under which said measures will be implemented.

(C) *Restrictions on issuance of permit.* No permit shall be approved unless the Building Official is satisfied based upon the application and other proof provided by the applicant that:

- (1) Noise levels occurring during the period of the permit will not constitute a danger to public health;
- (2) Compliance with this Chapter would impose negative consequences upon the applicant and the public that reasonably outweigh the benefits realized by the public; and
- (3) The applicant has fully complied with the application procedures, including, without limitation, providing individual notice to surrounding properties of the requested permit if required, the scope of which to be determined by the Building Official based on the nature of the request.

(D) *Considerations in determining whether to grant permit.* In making the determination of whether to grant a permit, the Building Official shall consider:

- (1) The character and degree of interference with the health and welfare or the reasonable use of property that may be caused by the applicant's activities;
- (2) The value to the community of the activity for which the permit is sought;
- (3) The ability of the applicant to apply the best practical noise control measures; and
- (4) Proximity to residences at which reasonable persons of normal sensibilities would be disturbed by the noise and the degree of such disturbance in terms of noise and duration.

(E) *Other restrictions.*

- (1) No permit shall be issued for the operation of sound equipment at Nighttime from a motor vehicle or for a location within 200 feet of a Residential Area.

(2) No permit shall be issued if the applicant has been convicted of more than two (2) violations of this Chapter within eighteen (18) months preceding the date of the application, or there have been two (2) or more convictions for violations of this Chapter by any person at the physical location for which the permit is sought to be used in the six (6) months preceding the application date.

(F) Issuance or denial of permit.

(1) The Building Official shall grant or deny the permit within ten (10) business days of receiving the properly completed application. An application for the same applicant or location may not be submitted for a period of thirty (30) days following the denial of an application.

(2) If the Building Official determines a permit should be issued pursuant to the criteria established in this Section, a permit shall be issued which states the type of sound permitted, the location at which the sound will be permitted, the maximum decibel level to be allowed, the times at which the sound will be allowed to be produced, and the expiration date and time of the permit.

(3) The decibel limits on a permit issued pursuant to this Section shall be set up to a maximum of ten (10) decibels over the limits which would otherwise apply pursuant to Section 94.05, unless the Building Official determines a lower limit is required under the circumstances.

(G) Time and frequency limits on permit.

(1) For an outdoor music establishment which uses sound equipment in a manner which produces sound audible beyond the Real Property Boundary of the property on which the equipment is operated, a permit shall not exceed one (1) year in duration. A new permit application shall be required for a new permit to be issued for any subsequent year. Any such permit shall terminate upon change in the owner or operator of the establishment listed on the application and a new permit application by the new owner will be required to obtain a new permit.

(2) A permit for construction noise shall be issued for the expected duration of the noise for which the permit is issued, unless circumstances determined by the Building Official warrant a shorter period or sequence of periods.

(3) In all other cases, a permit shall be issued for a maximum period of seventy-two (72) hours, but no more than twelve (12) consecutive hours per day and no such permit shall be issued for the same location within thirty (30) days of the date of expiration of the previous permit.

(H) Revocation of permit. As a condition of permit issuance, the applicant agrees that the permit may be revoked by the Building Official if the terms of the permit are violated; if it is learned that there were material misrepresentations made in the permit application; or if there is a

material change in any of the circumstances relied upon by the Building Official in granting the permit.

§ 94.08 APPEAL OF DENIAL OR REVOCATION OF PERMIT.

- (A) If the Building Official denies or revokes a permit under this Chapter, an applicant may appeal the Building Official's decision to the City Manager by filing a written statement of the decision being appealed and the grounds for the appeal with the City Manager no later than the tenth (10th) business day after the date on which notice of the decision is delivered to the applicant or permit holder or placed in the U.S. mail in a stamped envelope addressed to their last known address. The applicant or permit holder is responsible for making the appeal by a date which will allow time for the decision on the appeal to be made prior to the date on which the noise will commence.
- (B) No later than the tenth (10th) day after receiving a request for an appeal, the City Manager shall consider the appeal and make a decision.
- (C) The City Manager may sustain, reverse, or modify the action appealed. The City Manager's decision shall be based upon the criteria set forth in Section 94.07 and is final.

§ 94.09 ENFORCEMENT.

- (A) The Chief of Police will have primary responsibility for the enforcement of the noise regulations established herein. Nothing in this Chapter shall prevent the Chief of Police from having the authority to obtain voluntary compliance by way of warning, notice or education, or from taking any such additional action authorized under state and local law, including without limitation, enforcing disorderly conduct law.
- (B) Violation of any provision of this Chapter shall be cause for a citation to be issued by the Chief of Police. In the event the noise disturbance violating this Chapter is not immediately stopped following issuance of a citation, the Chief of Police may issue a directive to any person having possession or control over noise generating property to immediately halt the making of any sound which exceeds the decibel levels prescribed in Section 94.05 of this Chapter. Failure to comply with said directive shall constitute a separate violation of this ordinance. In the event that compliance is still not achieved following the issuance of a citation and directive, the Chief of Police shall take such other action necessary to secure compliance as authorized by state and local law.

§ 94.07—10 VIOLATIONS.

- (A) It is a violation of this chapter to do any act that is prohibited by this chapter.
- (B) Each day, or portion thereof, following issuance of a citation or a directive from the Chief of Police, that a violation continues constitutes a separate offense.
- (C) The Persons responsible for violations of this chapter are identified as follows:

- (1) At private residences. Any adult resident present at the time of the offense, and any adult guest or adult trespasser with the ability to control the level of noise at the time of the offense when no adult resident is present at the time of the offense.
- (2) At business locations. Any business owner, operator, manager, employee in charge, and all Persons in control of of the property or with the ability to control the level of noise ~~in possession of the noise nuisance generating instrument or property~~ at the time of the offense.
- (3) —At any location where any Person leaves an unattended noise ~~nuisance producing~~generating machine, device, instrument, child, animal, or any combination of same, which thereafter commences producing noise in violation of this chapter.

(Ord. 291-88-10-11, passed 10-11-88; Am Ord. 793-05-07-26, passed 7-26-05; Ord. 836-06-07-25, passed 7-25-06) Penalty, see § 10.99

§ 94.11 PENALTY

- (A) The violation of any provision of this Chapter that has not been identified as a public nuisance herein shall be punished by a fine not to exceed \$500; a violation of this Chapter identified as a public nuisance shall be punished by a fine not to exceed \$2,000.
- (B) Each day, or portion thereof, following issuance of a citation or a directive from the Chief of Police, any violation of this Chapter continues will constitute a separate offense. If any such violation is designated as a public nuisance under the provisions of this Chapter, the public nuisance may be summarily abated by the City Manager or the Chief of Police or their designees.
- (C) A culpable mental state is not required for the commission of an offense under this Chapter unless the provision defining the conduct expressly requires a culpable mental state.