

## CHAPTER 34. ENVIRONMENT

### ARTICLE VII. NOISE

#### DIVISION 1. GENERALLY

##### **Sec. 34-360. Purpose and intent.**

Among the powers granted to the city by its home rule Charter is one to pass such ordinances as may be expedient for maintaining and promoting the peace, welfare and government of the city and for the performance of the functions thereof. The purpose and intent of this article is the prohibition of unreasonably loud, disturbing and unnecessary noises in the city or affecting persons or property within the city, particularly such noises as are prolonged, unusual and unnatural in their time, place and use, and which materially interfere with the peace, welfare and government of the city. To this end, the police power of the state, delegated to this city to include the city's authority to define and prohibit nuisances within the city's jurisdiction, is invoked in aid of this article.

##### **Sec. 34-361. Definitions.**

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

*City's jurisdiction* shall mean and include territory within the City's limits and territory within 5000 feet outside of the City's limits.

*dB(A)* shall mean the intensity of a sound expressed in decibels read from a calibrated sound level meter utilizing the A-level weighting scale and the slow meter response, as specified by the American National Standards Institute.

*Decibel* shall mean a logarithmic unit of measure used in describing the amplitude of sound, denoted as dB.

*Industrial property* means property used for light or heavy industrial uses as defined in Section 130-1 of the Code.

*Non-residential property* means any property other than residential property and industrial property.

*Residential property* means any property used as single family, duplex or multifamily dwelling units.

##### **Sec. 34-362. Prohibited generally.**

The creation of any unreasonably loud, disturbing and unnecessary noise discernible in the city's jurisdiction shall be unlawful. It shall also be unlawful for the owner, lessee or proprietor of any business, house, apartment or other dwelling unit in the city's jurisdiction to

make, cause, permit or suffer to be made therein any such loud, disturbing or unnecessary noises or to collect or permit to be collected therein any drunken, noisy or disorderly persons, to the annoyance or disturbance of neighboring residents. Noises of such character, intensity and duration as are reasonably calculated to be detrimental to the life or health of an ordinary, reasonable person are prohibited in the city's jurisdiction.

### Sec. 34-363. Maximum permissible sound levels.

- (a) In enforcement of the violations established by section 34-362 of this article, it shall be *prima facie* evidence that a sound unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of section 34-362 when an activity or sound source produces a sound that exceeds the dB(A) levels measured, as provided in section 34-364, that exceeds the applicable dB(A) level listed below for the property on which the sound is received:

(1) Residential property:

a. 65 dB(A) after 7:00 a.m. to 9:00 p.m.

b. 50 dB(A) after 9:00 p.m. to 7:00 a.m.

(2) Nonresidential property:

a. 70 dB(A) after 7:00 a.m. to 9:00 p.m.

b. 65 dB(A) after 9:00 p.m. to 7:00 a.m.

- (b) In enforcement of the violations established by section 34-362 of this article, it shall be *prima facie* evidence that a sound unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of section 34-362 when any noise equals or exceeds the following standards when measured at any point within the real property boundary of the receiving real property:

(1) A peak sound pressure level of seventy-five (75) dB(A) at any time on any receiving property.

(2) A peak sound pressure level of ten (10) dB above the ambient measured on any nonresidential property location between the hours of 9:00 p.m. and 7:00 a.m. on any day of the week.

(3) A peak sound pressure level of five (5) dB above the ambient measured on any residential property location between the hours of 9:00 p.m. and 7:00 a.m. on any day of the week.

(4) A peak sound pressure level of ten (10) dB above ambient as measured in any octave band center frequency as follows:

Octave Band Center Frequencies (Hertz)							
63	125	250	500	1000	2000	4000	8000

- (c) Maximum permissible sound levels detailed in this section set forth evidence of a violation of this article. The lack of sound level measurements conducted in accordance with section 34-364 shall not prohibit prosecution and conviction under this article where there is other legally admissible evidence whereby a reasonably prudent person could conclude that a noise in the city’s jurisdiction is unreasonably loud, disturbing and unnecessary.
- (d) Unless otherwise exempted, all noise created on industrial property within the city’s jurisdiction shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness and as measured at any property line, shall not exceed the following intensity in relation to sound frequency:

Octave Band Frequency Cycles per Second	Maximum Sound Levels — Decibels	
	After 7:00 a.m. to 9:00 p.m.	After 9:00 p.m. to 7:00 a.m.
20 to 75	78	72
75 to 150	74	68
150 to 300	68	62
300 to 600	61	55
600 to 1,200	55	49
1,200 to 2,400	49	43
2,400 to 4,800	43	37
Above 4,800	41	35
Impact noise	80	74

**Sec. 34-364. Permissible methods of measuring sound levels.**

Measurements taken pursuant to section 34-363 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 non-residential property or residential property where the sound is received towards the source of the sound.

**Sec. 34-365. Specific prohibitions.**

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this article but such enumeration shall not be construed to be exclusive of other noises:

- (1) *Horns and signaling devices.* The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal; the creation by means of any such signaling device of any unreasonably loud or harsh sound, and the sounding of such device for any unnecessary and unreasonable period of time.
- (2) *Radios, phonographs or musical instruments.* The playing of any radio, phonograph or any musical instrument in such manner or with such volume, particularly during the hours between 9:00 p.m. and 7:00 a.m., as to create a noise such as is reasonably calculated to disturb a person of ordinary disposition under the same or similar circumstances residing in a dwelling, hotel or other type of residence in the vicinity, provided that this subsection shall not apply to the establishments or places covered by subsection (4) of this section.
- (3) *Loudspeakers, amplifiers for commercial advertising.* The operation of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.
- (4) *Outdoor loudspeakers at places selling food or drink.* The operation of any outdoor loudspeaker or sound amplifier for the producing or reproducing of music at any cafe, restaurant, drive-in, tavern, ice cream store, watermelon garden or other place open to the public for the purpose of selling food or drink and having facilities or premises set aside for the accommodation of patrons, guests or customers located on the outside of the building, when the volume of sound shall be audible for a distance in excess of 200 feet from such outdoor loudspeaker or sound amplifier or when the volume of sound is unreasonably raucous, jarring or disturbing to persons of ordinary sensibilities residing in a dwelling, hotel or other type of residence in the vicinity. However, if a dwelling, hotel or other type of residence is located within 200 feet of an outdoor loudspeaker or sound amplifier of the kind referred to in this subsection, such outdoor loudspeaker or sound amplifier shall not be operated between the hours of 10:00 p.m. and 9:00 a.m.
- (5) *Automobile, motorcycle or vehicle out of repair.* The use of any automobile, motorcycle or vehicle so out of repair or so loaded as to create loud or unnecessary grating, grinding, rattling or other noise.
- (6) *Schools, courts, churches, hospitals.* The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while such is in use or adjacent to any hospital, which unreasonably interferes with the workings of such institution or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such street indicating that the street is a school, hospital or court street.

- (7) *Hawkers, peddlers.* The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.

### **Sec. 34-366. Exceptions.**

The following activities are exceptions to prosecution under this article:

- (1) Emission of any sound for the purpose of alerting persons to the existence of an emergency, danger, or attempted crime.
- (2) Sound produced by an authorized emergency vehicle or produced by emergency work.
- (3) Sound generated:
  - a. At a lawfully scheduled stadium or sporting event, including, but not limited to, school athletic and school entertainment events;
  - 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 battle reenactments for which a pyrotechnic permit 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 co-sponsored by the city and is in full compliance with a permit issued by the city.
- (4) Sound 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 7:00 a.m. and 9:00 p.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.
- (5) Sound produced by aircraft in flight or in operation at an airport and railroad equipment in operation on railroad rights-of-way.
- (6) Sound 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., provided the device did not produce a sound exceeding 90 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.

- (7) Sound 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 non-residential property, when measured from the property line of the non-residential or residential property where the sound is received to the source of the sound.
- (8) Sound produced as part of a religious observance or service between the hours of 7:00 a.m. and 9:00 p.m., provided the sound did not cumulatively exceed five minutes duration in any one hour period.
- (9) Sound, other than sound prohibited in section 34-365(2), produced within park hours as specified in section 70-1 of the code, which hours fall between 7:00 a.m. and 9:00 p.m. 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) Sound produced from the ordinary and lawful operation of a motor vehicle and commercial vehicle under the Texas Code of Transportation.
- (11) Sound produced between the hours of 7:00 a.m. and 9:00 p.m. from the emptying of trash dumpsters or by the delivery, pick up, or raising of any dumpster, in or near residential areas.

Section 2: All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

Section 3: If any provision, section, exception, subsection, paragraph, sentence, clause or phrase of this ordinance or the application of same to any person or the set of circumstances, shall for any reason be held unconstitutional, void or invalid, such invalidity shall not affect the validity of the remaining provisions of this ordinance or their application to other persons or sets of circumstances and to this end all provisions of this ordinance are declared to be severable.

Section 4: Any person who fails to comply with any provision of this ordinance shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisances, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: This ordinance shall take effect from and after ten (10) days from its passage by the City Council. The City Clerk is hereby directed to give notice hereof by causing the caption of this ordinance to be published in the official newspaper of the City of Baytown at least

twice within ten (10) days after passage of this ordinance.

INTRODUCED, READ, and PASSED by the affirmative vote of the City Council of the City of Baytown, this the 25<sup>th</sup> day of October, 2012.

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STEPHEN H. DONCARLOS, Mayor

ATTEST:

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LETICIA BRYSCH, City Clerk

APPROVED AS TO FORM:

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IGNACIO RAMIREZ, SR., City Attorney