

ORDINANCE 18-04

AN ORDINANCE OF THE CITY OF WOODWAY, TEXAS, AMENDING CHAPTER 11 – NUISANCES AND OFFENSIVE CONDITIONS, ARTICLE 1. – IN GENERAL, SECTION 11-2 – NOISE AS PUBLIC NUISANCE OF THE CITY OF WOODWAY CODE OF ORDINANCES; EXPANDING UPON THE GENERAL PARAMETERS SET FORTH WITHIN PREVIOUS SAID ORDINANCE; AUTHORIZING SPECIFIC DECIBEL GUIDELINES PERMITTED AND THE METHODOLOGY FOR DETERMINING SUCH; STIPULATING THE PARTICULAR PROHIBITIONS REGARDING VARIOUS NOISE-INDUCING CAUSES; DELINEATING THE AFFIRMATIVE DEFENSES ALLOWABLE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING THAT THE MEETING AT WHICH THIS ORDINANCE WAS ADOPTED WAS NOTICED AND OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WOODWAY, TEXAS:

SECTION I

That Chapter 11, Nuisances and Offensive Conditions, Article 1, In General, of the Code of Ordinances of the City of Woodway, Texas, Section 11-2, Noise as Public Nuisance, is hereby amended in its entirety to read as follows:

Sec. 11-2. - Noise as public nuisance.

This section seeks to outline the definition of and prevention of public nuisance as created by any loud, disturbing and unnecessary noise which is greater than the stipulated decibels as summarized in section 11-2.2, of which is reasonably calculated in accordance to the specifications outlined in section 11-2.6, which may disturb the ordinary comfort of a reasonable and prudent person unless otherwise further restricted by means of the articles contained within this section and City Code.

Sec. 11-2.1 – 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 the usage clearly indicates another meaning:

- (a) *Daytime hours* shall mean the hours between 7:00 a.m. on one day and 11:00 p.m. the same day.

(b) *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 applicable publications of the American National Standards Institute or its successor body.

(c) *Emergency work* shall mean any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, or which is otherwise necessary to restore property to a safe condition following a fire, accident or natural disaster, or which is required to protect persons or property from exposure to danger, or which is required to restore public utilities.

(d) *Nighttime hours* shall mean the hours between 11:00 p.m. on one day and 7:00 a.m. on the following day.

(e) *Nonresidential property* shall mean any real property within the limits of the city which is not included in the definition of residential property as defined in this section.

(f) *Residential property* shall mean any real property developed and used for human habitation and which contains living facilities, including provisions for sleeping, eating, cooking and sanitation.

(g) *Person* shall mean any individual, association, partnership or corporation.

(h) *Sound nuisance* shall mean any sound which either exceeds the maximum permitted sound levels specific in section 11-2.2 or otherwise unreasonably disturbs, injures or endangers the comfort, repose, health, peace or safety of persons with ordinary and prudent sensibilities within the limits of the city.

Sec. 11-2.2 – Maximum permissible sound levels.

No person shall conduct, permit or allow any activity or sound source to produce a sound that is discernible beyond the property lines of the property on which the sound is being received that when measured as provided in section 11-2.6 of this code exceeds the applicable dB(A) level listed below for the property on which the sound is received:

(1) *Residential property:*

a. Eighty-five (85) dB(A) during daytime hours.

b. Eighty (80) dB(A) during nighttime hours.

(2) *Nonresidential property:*

a. Eighty-five (85) dB(A) during either daytime or nighttime hours.

The dB(A) levels set forth in this section apply to the property where the sound is being received. Any sound that when measured at the property where the sound is being received

exceeds the dB(A) levels set forth in this section 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, when measured at the site where the sound is being produced, if available, shall be prima facie evidence of a sound nuisance which unreasonably disturbs, injures or endangers the comfort, repose, health, peace or safety or others within the limits of the city in violation of this chapter.

Sec. 11-2.3 – General prohibition.

The following acts, conditions or circumstances are declared to be public nuisances by the city council of the City of Woodway and are subject to the remedial and penalty provisions hereof. Provided, however, that the following list of specific acts is not considered to be exhaustive of those acts and/or activities which are public nuisances:

- (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 which either exceeds the maximum permitted sound levels specified in section 11-2.2 or otherwise unreasonably disturbs, irritates, injures, or endangers the comfort, repose, health, peace or safety of persons with ordinary sensibilities within the limits of the city.
- (2) The playing of any radio, phonograph, musical instrument or electronic musical device such as an iPod, computer or cell phone (with or without amplification via a loudspeaker or amplifier) in such manner or of such volume, particularly during nighttime hours as specified in section 11-2.2, as to unreasonably annoy, irritate, disturb, injures or endangers the comfort, repose, health, peace or safety of persons with ordinary sensibilities within the limits of the city. Note that the playing of music or speech containing foul or offensive language or subjects will be prohibited. In addition, any vibration caused from the playing of music or other outdoor activities of such volume as outlined in section 11-2.2 shall not be felt, experienced or noticeable by persons with ordinary sensibilities within a range of thirty (30) feet from the source of the music or activity within the limits of the city.

Sec. 11-2.4 – Further unlawful acts enumerated.

In addition to the acts described in section 11-2.3, the acts enumerated in the following sections of this article, among others, are declared to be sound nuisances which are unreasonably loud, irritating, disturbing or excessive sounds in violation of this article, but such enumeration shall not be deemed to be exclusive.

(1) Noisy animals

- a. The keeping of any animal which barks, whines, howls, cries, crows, cackles or makes any noise excessively and continuously, and such noise disturbs a person of reasonable and ordinary sensibilities, is hereby prohibited and declared to be unlawful as a sound nuisance in violation of this article, regardless of whether the sound so created by said animal or bird is within the permissible levels specified in section 11-2.2 of this code.

(2) Noisy vehicles

- a. The use or running of any automobile, motorcycle or other vehicle in such a manner so as to create loud and unreasonable grating, grinding, spinning, rattling or any other loud and unreasonable sound, including the excessive revving of engines and squealing of tires, is hereby prohibited and declared to be unlawful.
- b. The continued or frequent sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion except as a danger or warning signal; the creation by means of any such signal device of any unreasonably loud or harsh sounds; and the sounding of any such device for any unnecessary and unreasonable period of time.
- c. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, or motor vehicle or boat engine except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- d. The operation, production or reproduction of sound from amplification equipment contained in or mounted on a motor vehicle that produces sound in excess of the limits set forth in section 11-2.2 when measured at or near thirty (30) feet from the nearest external point on the vehicle or otherwise produces noises which are unreasonably loud, irritating or disturbing are hereby prohibited and declared to be unlawful as a sound nuisance in violation of this article, with the exception of police and emergency vehicles. Likewise, the vibration caused by the noise nuisance mentioned throughout this article and the entirety of this Code is deemed unlawful if it can be felt or experienced at a distance of thirty (30) feet or more from the vehicle from where the sound is produced.
- e. The use or operation of any speaker, sound amplifier, radio, stereo, cassette tape player, compact disc player or other device which is

contained within or affixed to a motor vehicle while it is in operation upon the streets, parked upon the roadway, or parked in a private drive in such a manner as to emit loud and/or raucous noise which is disturbing or offensive to a person of ordinary and reasonable sensibilities is prohibited and declared to be unlawful.

(3) Miscellaneous

- a. With the exception of pneumatic drills, the use of any mechanical device operated by compressed air is prohibited unless the noise thereby created is effectively muffled and reduced.
- b. The blowing of any steam whistle attached to any stationary boiler is unlawful unless it is utilized in order to give notice of the time to begin or stop work, or as a warning of danger is considered a noise nuisance and prohibited.
- c. The sounding of any bell, chime or gong attached to any building or premises which is reasonably calculated to disturb a person of ordinary disposition if such a person were in the vicinity thereof is considered unlawful according to this article.
- d. Also prohibited is the creation of any excessive noise on any street adjacent to any school or institution of learning which unreasonably interferes with the working of such institution, provided that conspicuous signs are displayed on such streets indicating that the area is a school zone.
- e. The creation of loud and excessive noise in connection with the loading or unloading of any vehicle, or the handling, opening or destruction of bales, boxes, crates or containers is unlawful according to this article.
- f. Also unlawful is the shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.
- g. The use of any drum, loudspeaker, bull horn, or other instrument or device to create noise for the purpose of attracting attention to any performance, show or sale of merchandise is strictly prohibited and unlawful.
- h. Noise created by large equipment during the erection, excavation, demolition, alteration or repair of any building, fence or other structure, other than between the hours of 7:00 a.m. and 6:00 p.m., Monday through Sunday, except in the case of urgent necessity in the interest of public safety and convenience, is considered a noise nuisance and unlawful in accordance to the perimeters set forth this article.

- i. General noise which interferes with the enjoyment of private and public peace and comfort is prohibited. It shall be unlawful for any person to knowingly make, cause to be made or allow any loud, disturbing and unnecessary noise as outlined in section 11-2.2 throughout the city and which is offensive to a prudent and ordinary person, so that it renders the enjoyment of life or property uncomfortable, or interferes with public peace and comfort.

Sec. 11-2.5 – Affirmative defenses.

The following defenses shall apply to any offense established within this article and shall be exempt from the aforementioned noise nuisance regulations:

- (1) The emission of any sound which was for the purpose of alerting persons to the existence of an emergency, danger or attempted crime, and includes safety signals, warning devices and emergency pressure relief valves;
- (2) Any and all sounds produced by an authorized emergency vehicle;
- (3) The sound was produced by emergency work which was necessary to restore public utilities, to restore property to a safe condition, or to protect persons or property from imminent danger, following a fire, accident or natural disaster;
- (4) The sound was generated:
 - a. At a lawfully scheduled stadium or outdoor public field event;
 - b. By a parade and the spectators and participants along the parade route during an authorized parade;
 - c. By spectators and participants of any outdoor event, fun run, race, festival, or concert which was sponsored, co-sponsored or permitted by the city;
 - e. A governmental entity as defined by Local Government Code § 271.021 and all subsequent amendments;
- (5) The sound was produced by the erection, excavation, construction, demolition, alteration, repair work, or the permitting or causing thereof, of any building or other structure, or the operation or the permitting or causing the operation of any tools or equipment used in any such activity conducted between the hours of 7:00 a.m. and 6:00 p.m., and which activity did not produce a sound exceeding 85 dB(A) when measured from the nearest residential property where the sound is being received;

- (6) The sound was produced by operating or permitting the operation of any small handheld equipment such as a 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 8:00 p.m., and which the device did not produce a sound exceeding 85 dB(A) when measured from 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 used;
- (7) The sound was produced by the operation of any air conditioning unit which 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.

Sec. 11-2.6 – Method of sound measurement.

Whenever portions of this article prohibit sound over a certain decibel limit, measurement of said sound shall be made 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). Noise levels shall be measured in decibels and A-weighted. The unit of measurement shall be designated as dB(A). Meters shall be maintained in calibration and good working order. Calibrations shall be employed which meet A.N.S.I.S1.40-1984 prior to and immediately following every sampling of sound. Measurements recorded shall be taken so as to provide a proper representation of the sound being measured. The microphone of said meter shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound. A windscreen for said microphone shall be used.

SECTION II

That all other ordinances and parts of ordinances, codes, regulations, policies and guidelines of the City of Woodway which are in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION III

That if any provision of this ordinance is found by a Court of competent jurisdiction to be invalid, unconstitutional, or unenforceable, or if the application of this ordinance to any person or circumstance is found to be invalid, unconstitutional or unenforceable, such invalidity, unconstitutionality or unenforceability shall not affect the other provisions or applications of this ordinance which can be given effect without the invalid, unconstitutional or unenforceable provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION IV

That it is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.


PASSED AND APPROVED this the 24th day of September 2018.

CITY OF WOODWAY, TEXAS



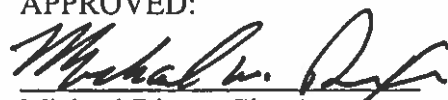
Bob Howard, Mayor

ATTEST:



Donna Barkley, City Secretary

APPROVED:



Michael Dixon, City Attorney