ORDINANCE NO. 5082

AN ORDINANCE AMENDING ARTICLE VI OF THE CITY COUNCIL OF THE CITY OF MISSION, TEXAS', CODE OF ORIDINANCES – NOISE REGULATIONS -WHEREBY MEASURABLE NOISE LIMITS ARE SPECIFIED TO BE HEREAFTER ESTABLISHED; AMENDING THE PROVISIONS FOR OPERATING SOUND TRUCKS AND THE REQUIRED LICENSING OF SAID SOUND TRUCKS' OPERATION; PROVIDING FOR REASONABLE EXCEPTIONS; PROVIDING FOR A SPECIAL EXCEPTIONS PROCESS; PROVIDING FOR A CUMULATIVE PROVISION; PROVIDING FOR A SEVERABILITY PROVISION; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDIANCE'S APPLICABILITY; PROVIDING INSTRUCTION TO THE CITY SECRETARY TO PUBLISH THESE NOISE REGULATIONS IN THE CITY OF MISSION, TEXAS' CODE OF ORDINANCES

WHEREAS, The City of Mission, Texas was incorporated to provide for orderly growth and maximum enjoinment to its citizens, patrons, and guests of its general ambience, as established and uniformly enforced laws, statues, and ordinances; and,

WHEREAS, The City of Mission, Texas understands that the issue of loud noise may occasionally be a public nuisance as may be generated from its public and private properties; and,

WHEREAS, The City of Mission, Texas has reviewed its current Noise regulations, as found in Article VI of its Code of Ordinances, and determined that there is a need to amend said regulations to further established specific thresholds of what constitutes un-reasonable noise to the general public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MISSION, COUNTY OF HIDALGO, TEXAS THAT THE FOLLOWING PROVISIONS OF ARTICLE VI, MISSION'S CODE OF ORDINANCES – NOISE – BE HEREBY AMENDED:

It is declared that the provisions shown in **bold** and **underlined** are new provisions; and current provisions that have a ~~strike through~~, are hereinafter deleted.

Sec. 42.231- Prohibited generally.

It shall be unlawful for any person **or persons**, to make, ~~continue or cause to be made or continued~~ **continually make**, any loud **and** unnecessary ~~or unusual noise or any~~ noise which ~~either~~ annoys, disturbs, injures, **and/**or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensitivity.

Sec. 42-231 (A) Definitions.

(a) **Decibel: means 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.**

(b) **Noise: Means sound which is louder than that permitted in this chapter, or disturbs a reasonable person of normal sensibilities**

(c) **Sound Equipment: means a loud speaker, public address system, amplification system, or other similar producing device.**

Sec. 42.231 (B) Restrictions on decibel levels

(a) **Maximum decibel levels.**

Nonresidential & Residential noise source maximum decibel levels. No person shall cause, allow, or permit the making of a noise from a nonresidential property in the City limits and any part of the City's extraterritorial jurisdiction within five hundred (500) feet of the City limits which exceeds the following sound pressure levels as measured pursuant to subsection (d) herein:

(1) Daytime & Nighttime: 65 dB

(b) **Noise measurement. Noise shall be measured with a sound level meter meeting the standards prescribed By the American Standards Association. The measuring**

instruments shall be maintained in good working order. Measurements recorded shall be taken so as to provide a more accurate reading of the noise being volume-calculated. The surrounding environment, including weather-related conditions, shall be strictly considered so as to determine if the proximity of background noise to the level of sound being measured renders the proper reading or not. The microphone shall be screened from wind, etc., in accordance with the manufacturer's specifications.

(1) Sound level meter is defined as an instrument which includes a microphone, amplifier, RMS detector, integrator or time average, 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.

(2) Location of measurement. Measurement of noise shall be taken from the real property line of the person alleging a violation of this section from the point closest to the point of origin of the noise.

(3) If the intonations or pressurized sound is not able to be properly measured by a regularly calibrated sound level meter, then the City of Mission's Police Department will rely on their trained sense of judgment to discern whether there is a Noise Ordinance violation or not.

(4) The Mission Police Department shall be typically be the lead department to enforce the provisions, and regulations of this Noise Ordinance; though other city departments may be assigned to assist, though to a more limited degree.

Sec. 42-232. - Playing radio, expressing messaging, and/or use of other musical instruments, sound equipment, loudspeakers and amplifiers.

(a) The playing of any radio, phonograph, equipment that emanates music or other type of messaging, or the playing of other musical instrument in such a manner or with such volume, as to annoy or disturb the quiet, comfort or repose of person of ordinary sensibilities in any dwelling, hotel, or other type of residence, shall be deemed a violation of this Article. **This will include any individual that amplifies the music or messaging in a private or public or semi-public vehicle. (see exceptions in Sec. 42-244).**

(b) It is unlawful for any person or persons to operate or cause to be operated any sound equipment, amplifier, loudspeaker, or musical instrument that exceeds maximum decibel levels pursuant to section 42.231(B) (a) measured in accordance with section 42.231(B) (2). "To operate or cause to be operated" this assessment shall include but not be limited to the following:

(1) A person or persons causing the device to function or keeping it in operation; or

(2) A person or persons supervising or managing other persons who cause the device to function.

(3) A person or persons who, after being alerted by local authorities or others to lower the volume due to its apparent violation and disruption to others, cause the (same or another) device to be re-activated in intentional breach of these Noise regulations.

~~Sec. 42-233. - Loudspeakers, amplifiers or musical instruments.~~

~~The use of any stationary loudspeaker or amplifier of such intensity that annoys and disturbs a reasonable person of normal sensitivity in the immediate vicinity thereof; or the use of any stationary loudspeaker or amplifier operated on any weekday between the hours of 10:30 p.m. and 7:00 a.m. shall be deemed a violation of this article.~~

Sec. 42.234. – Animals or fowl.

The keeping of any animal including fowl and birds, but not dogs as contained in section 14-75 of this Code, which by causing frequent or long, continued noise shall disturb the comfort or repose of any person in the vicinity shall be deemed a violation of this article.

Sec. 42-235. Horns and warning devices.

The sounding of any horn or other warning device an any ~~automobile, motorcycle or other~~ **motorized** vehicle on any **public or private street** or public place of the city ~~except as a danger warning the creating by means of any such warning device of any unreasonably loud or harsh sound; the sounding of such device~~ for an unnecessary and unreasonable period of time ~~and the use of such warning device when traffic for any reason is held up~~ shall be deemed a violation of this Article. **However, should a bona fide dangerous situation be discerned or suspected, the use of a horn or other warning device may be legitimately used, and shall be exempted from being violative of these regulations.**

~~**Sec. 42-236. - Defect in vehicle or load.**~~

~~The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise shall be deemed a violation of this article.~~

Sec. 42-236. Operation of vehicles.

The running of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud or unnecessary grating, grinding, jarring or rattling noise, or vibrations.

Sec. 42-238. – Devices operated by compressed air.

The use of any mechanical device operated by compressed air, unless the noise to be created is effectively muffled and reduced during the hour of 8 a.m. to 6 p.m.

~~**Editor's note—** Ord. No. 4408, adopted Sept. 26, 2016, repealed § 42-238 in its entirety. Former § 42.238 pertained to compressed air devices and derived from the Code of 1976, § 22-8.~~

Sec. 42-239. Construction or demolition work.

The erection, including excavation, demolition, alteration or repair work on any building other than between the hours of 7:00 a.m. to 6:00 p.m. **on residential zones. Commercial and Industrial zones where no residential properties abut may commence at 3:00 a.m. to 6:00 p.m. (Exemptions may be considered for residential and estate homes to commence construction at 3:00 a.m.)**

~~Sec. 42-242 - Violation of article; remedies.~~

~~In the event of a violation of this article or any of its provisions by any person, corporation, association, or any other type of business entity, its agents, servants or employees, the city may, in addition to other remedies, institute any appropriate action or proceedings to prevent such violation, including the right to restrain, enjoin, correct, or abate such violation, in any court of competent jurisdiction in accordance with the laws of the state~~.
(Code 1976, § 22-12)

Sec. 42-242 Nuisance declared

(a) Any unreasonably loud, disturbing, unnecessary noise which exceeds maximum decibel levels pursuant to section 42.231(A)(a) that is measured in accordance with section 42.231 (A)(b) thereby causing material distress, discomfort or injury to persons of ordinary sensibilities in the immediate vicinity thereof is hereby declared to be a nuisance and is hereby prohibited.

(b) Any noise of such character, intensity and continued duration which exceeds maximum decibel levels pursuant to section 42.231 (A)(a) that is measured in accordance with section 42.231 (A)(b) thereby substantially interfering with the comfortable enjoyment of private homes of persons of ordinary sensibilities is hereby declared to be a nuisance and is hereby prohibited

Sec. 42.244. Specific noises enumerated

The following acts, among others, are declared to be nuisances in violation of this article, but such enumeration shall not be deemed to be exclusive:

(1) Motor vehicle music amplification or reproduction equipment or other sound-making devices. It is unlawful for any person to operate music amplification or reproduction equipment, or other electronic or mechanical sound-making device, from within a motor vehicle on a street or highway in the city so that the sound is plainly audible at a distance of one hundred (100) feet or more from the motor vehicle. It shall be presumed that the driver of any vehicle being operated on a street or highway is the operator of the sound-making device. The following exceptions shall apply:

(A) The provisions of this subsection shall not apply to any law enforcement motor vehicle equipped with any communication device necessary in the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary in the performance of any emergency procedures.

(B) The provisions of this subsection do not apply to motor vehicles used for business or political purposes which in the normal course of conducting such business use sound-making devices.

(C) The provisions of this subsection do not apply to the noise made by a horn or other warning device required or permitted by state law.

(2) Steam whistles. The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work, or as a warning of danger.

(3) Peddlers, hawkers and vendors. The raucous shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.

(4) Use of drums, loudspeakers, etc., to attract attention. The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention, by the creation of noise, to any performance, show or sale of merchandise.

(5) Sounding of sirens, etc., on vehicles. The sounding of any siren, horn or other signal device on any automobile, ambulance, truck, motorcycle, bus or other vehicle in the city, except as a danger or warning signal to persons or animals using the streets, sidewalks and public thoroughfares, shall constitute a violation of this article.

(6) Railroads. The blowing or sounding of any steam whistle, horn or signal device on any engine, locomotive car or vehicle adapted to the rails of a railroad in the city, except as a warning or danger signal to persons or animals approaching, crossing or using the tracks of the railroad, shall constitute a violation of this article.

(7) Use of certain braking devices. Operating or permitting the operation of the engine of a motor vehicle so as to assist in the braking or slowing of the vehicle through the use of gears or through the use of any engine brake or engine-retarding device on any public right-of-way, including but not limited to city or state-maintained roadways, within the corporate limits of the city.

Sec. 42.245 Special exceptions

(a) Application. A person seeking a special exception under this section shall complete and file a written application for a special exception with the city manager's office on the form provided by the police department. An application for special exception 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 owner or duly authorized agent of the business 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 for which the application is made;
(3) The time during which the noise will be generated and the level of noise that will occur;
(4) A signed statement that the applicant has obtained a copy of this article and related rules and agrees to comply with this article, the related rules provided,

and the terms and conditions of a special exception issued to the applicant;

(5) The reason for which the special exception is requested, including the hardship that will result to the applicant, his/her client, or the public if the special exception is not granted; and

(6) A description of noise control measures to be taken for the applicant to minimize noise and the impacts occurring therefrom and the schedule under which said measures will be implemented.

(b) Restrictions on approval of special exception. No special exception shall be approved unless the city manager and chief of police are satisfied based upon the application and other proof provided by the applicant that:

(1) Noise levels occurring during the period of the special exception will not constitute a danger to public health;

(2) Compliance with this article would impose an unreasonable hardship on the applicant or the public without greater benefits to the public; and

(3) The applicant has fully complied with the application procedures.

(c) Considerations in determining whether to approve a special exception. In making the determination of whether to grant a special exception, the city manager and the chief of police shall consider:

(1) The character and degree of injury to, or interference with, the health and welfare or the reasonable use of property that is caused or threatened to be caused;

(2) The value to the community of the activity for which the special exception 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 would be disturbed by the noise.

(d) Other restrictions.

(1) The city manager and chief of police shall consider each application on the same basis as that used for other similarly situated applicants and shall make each special exception decision free from consideration of race, sex, national origin, religion, the content of speech, or any other factors not provided for in this article;

(2) No special exception shall be approved for the operation of sound equipment at nighttime from a motor vehicle; and

(3) No special exception shall be approved if the applicant has been convicted of more than two violations under this article at the location for which the special exception is sought in the six months prior to the date on which the application is submitted.

(e) Approval or denial of special exception.

(1) The city shall grant or deny the special exception within sixty (60) business days of receiving the properly completed application. An application for the same applicant or location may not be submitted for a period of sixty (60) business days following the denial of an application.

(2) If the city manager and chief of police determine a special exception should be issued pursuant to the criteria established in this section, a special exception shall be issued which states the type of sound allowed, the location at which the sound will be allowed, the maximum decibel level to be allowed, the times at which the sound will be allowed to be produced, and the expiration date of the special exception.

(f) Revocation of special exception. The special exception may be revoked by the city manager and chief of police if the terms of the special exception are violated; if it is learned that there were material misrepresentations made in the special exception application; or if there is a material change in any of the circumstances relied upon by

the city manager and chief of police in granting the special exception.

Sec. 42.246 Exemptions

The following acts and sounds shall be exempt from the requirements of this article.

(1) The emission of sound for the purpose of alerting persons to an emergency;

(2) Sound produced by emergency vehicles;

(3) Sound produced by a vehicle motor in good working order while the vehicle is moving on a public right-of-way, public waterway, airport runway, or railroad;

(4) Sound produced by any governmental entity in the performance of a governmental function;

(5) Sound generated by parade spectators and participants in the parade route during a permitted parade; by outdoor celebration participants for the general welfare of the public;

(6) Sound generated at a religious event, during the daytime, held on premises that are regularly used for worship services;

(7) The use and operation of bells or an amplified, mechanical bell system in connection with the use and occupancy of a church structure;

(8) Sound generated from persons of reasonable behavior playing at a park or playground;

(9) Any utility or roadway maintenance or repairs in residential areas during the daytime and emergency repairs related to public health, safety and welfare of the residents, which are allowed at all hours;

(10) The sounding of any horn or signal device from a motor vehicle as a warning device.

2. Should any sentence, clause, phrase, or section of this ordinance be declared invalid by a court of competent jurisdiction, such declaration shall not affect the remaining portions of this ordinance which shall remain in full force and effect.

3. This Ordinance shall take effect immediately upon its passage and publication according to law.

READ, DISCUSSED, CONSIDERED AND PASSED ON THIS THE 13 DAY OF SEPTEMBER, IN THE YEAR OF OUR LORD, 2021.

Dr. Armando Ocaña, Mayor

ATTEST:

CITY OF MISSION, TEXAS

Anna Carrillo, City Secretary

APPROVED AS TO FORM:

CITY ATTORNEY