

ORDINANCE NO. 22-09

AN ORDINANCE OF THE CITY OF SOUTH PADRE ISLAND, TEXAS, REPEALING IN ITS ENTIRETY SECTION 12-2 OF THE CODE OF ORDINANCES OF THE CITY OF SOUTH PADRE ISLAND, NOISE ORDINANCE, BY ENACTING AND PROVIDING FOR A NEW SECTION 12-2 REGULATING NOISE WITHIN THE CITY; MAKING VARIOUS FINDINGS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR A PENALTY OF FIVE HUNDRED DOLLARS FOR ANY VIOLATION; PROVIDING FOR SEVERABILITY; AND AUTHORIZING THE PUBLICATION IN CAPTION FORM.

WHEREAS, the City of South Padre Island has heretofore adopted Section 12-2 (Noise Ordinance)) of the Code of Ordinances; and

WHEREAS, there have come into being within the city and especially in residential areas, loud, unnecessary, raucous, unreasonable and excessive noise under certain circumstances and conditions, that constitute a serious threat to the health, the welfare, the contentment, the peaceful enjoyment, the quality of life, and the feeling of well-being of inhabitants and visitors; and,

WHEREAS, loud, raucous, and excessive and unnecessary noise degrades the environment of the City of South Padre Island to a degree that it is, and the city has a substantial and, in some cases, compelling interest in controlling such noise; and,

WHEREAS, loud, raucous, excessive and unnecessary noise degrades the environment to a degree that it is harmful to the health, welfare, safety and the peaceful enjoyment of its inhabitants and visitors; and

WHEREAS, loud, raucous, unreasonable and excessive noise interferes with the peaceful and comfortable enjoyment of life and property and with the well-being, tranquility, and privacy of the home; and,

WHEREAS, loud, raucous, unreasonable and unnecessary noise both causes and aggravates health problems; and,

WHEREAS, individuals are not required to welcome and tolerate unwanted noise into their homes and there is simply no right to force unwanted noise into the home of an unwilling listener

and there is a compelling interest in prohibiting such noise on a content neutral basis; and,

WHEREAS, effective control and elimination of loud, raucous, excessive and unnecessary noise is essential to the health and welfare of the city's inhabitants and visitors to the conduct of the normal pursuits of life, including recreation, work and communication, and quality and peaceful enjoyment of life; and,

WHEREAS, the use of sound amplification equipment creates loud, raucous, excessive and unnecessary noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace, enjoyment of life, and freedom of inhabitants and visitors to the City of south Padre Island as well as interfering with commerce; and,

WHEREAS, it is the intent of the City Council to prevent loud, raucous, excessive and unnecessary noise without infringing unreasonably upon the rights of the city's inhabitants, businesses, and visitors; and,

WHEREAS, it is the intent of the City Council to prevent loud, raucous, excessive and unnecessary noise, whenever possible, without substantially burdening the free exercise of speech and in every case within the constraints set by the Texas and United States Constitutions and applicable laws, and this ordinance is intended to be in interpreted as consistent with all such constraints; and,

WHEREAS, the city's interest in regulating noise should and does take into account the time, place, and manner of such noise; and,

WHEREAS, a substantial body of science and technology exists by which excessive sound may be substantially abated; and,

WHEREAS, the City of South Padre Island may define and prohibit nuisances within its city limits to prevent and summarily abate a nuisance; and,

WHEREAS, the City Council feels obligated to reasonably regulate on a content neutral basis the time, place, and manner of using sound amplifying equipment and to regulate other noise with or without amplification, in order to protect the constitutional rights of the inhabitants and visitors to this community to personal privacy, peace and enjoyment, and personal freedom from diminishment by invasive and unwanted noise which is unnecessary or for which there are ample alternative channels; and,

WHEREAS, the City Council declares that the doing of such things in a manner prohibited by, or not in conformity with the terms of these sections constitute undesirable noise and shall be punished as hereinafter provided; and,

WHEREAS, the City of South Padre Island finds that the current Section 12 (noise ordinance) should be repealed in its entirety to enhance the public's peace and enjoyment in areas and to assist in the abatement of excessive noise and nuisances, and to better organize regulations of noise for clarification for the public, and for the other reasons outlined above.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH PADRE ISLAND, TEXAS:

SECTION 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. Section 12-2 of the City Code of Ordinances -Noise Ordinance is hereby repealed in its entirety and replaced in its entirety by this ordinance to read and be enacted as follows:

Sec. 12-2 SHORT TITLE – This Chapter may be cited and be known and referred to as the City of South Padre Island Noise Ordinance.

Sec 12-2.1 PURPOSE – The purpose of this ordinance is to prevent noise disturbance, noise nuisances, and excessive, loud, raucous, and unnecessary noise, sound, and vibrations to protect the general health, safety, and well-being of the city's inhabitants and visitors and to also safeguard the quality of life and the peaceful enjoyment for the city's inhabitants and visitors and to preserve the tranquility of the community.

Sec. 12-2.2

(A) DEFINITIONS – The following words, terms, and phrases when used in this

ordinance shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning. In the case where a word, term, or phrase is not defined herein, its common and traditional meaning shall be used.

“Background sound pressure level” shall mean that measured value which represents the summation of the sound from all the discrete sources affecting a given site at a given time, exclusive of extraneous sounds and the specific sound from the source of investigation.

“Background sounds” are those that are relatively constant at the point of measurement.

“Boundary line” shall mean the line along the ground surface and its vertical extension which separates the real property owned, leased, or occupied by one person from that owned, leased, or occupied by another person and its imaginary line which represents the legal limits of the property of any person who owns, leases, or otherwise occupies an apartment, condominium, hotel or motel room, office, or any other type of occupancy.

“Construction” shall mean any site preparation, assembly, erection, substantial repair, alteration, or similar action, but excluding demolition.

“Construction-related activities” shall mean and involve construction, demolition, excavation, or repair, of any nature, of a building, structure, flatwork, or any similar work involving construction.

“Daytime” shall mean the hours between 7:00 am and 10:00 pm from Sunday through Thursday and between 7:00 am and 11:00 pm Friday and Saturday.

“Decibel” shall mean a logarithmic unit of measure often used in measuring magnitudes of sound. Represented by the symbol dB.

“Extraneous sound” shall mean a short-duration or intermittent sound that is neither part of the background sound, nor comes from the sound under investigation.

“Impulsive sound” shall mean sound of short duration, usually less than one second, with an abrupt onset and rapid termination.

“Nighttime” shall mean the hours between 10:01 pm and 6:59 am from Sunday through Thursday and between 11:01 pm and 6:59 am Friday and Saturday.

“Noise” shall mean any specific sound which:

(1) Is done, accompanied, or carried on in such a manner, or with such a loud volume,

intensity, or with continued duration, to exceed what is usual, necessary, or normal; or

(2) Is louder than permitted in this chapter.

“Noise disturbance” shall mean an offense in violation of this ordinance.

“Noise nuisance” shall mean any loud, raucous, excessive, unnecessary, irritating, or disturbing sound which causes discomfort, annoyance, disturbance, or distress of a reasonable person of ordinary sensibilities, or any sound that is louder than permitted in this chapter.

“Person” shall mean the word “person” and includes an individual, and shall be applied to associations, corporations, firms, partnerships, receivers, trustees, and any other business or political entity.

“Plainly audible” shall mean any noise that can be detected by a peace officer or other enforcement officer, including code enforcement officers, using his or her unaided hearing faculties of normal acuity. As an example, if the sound source under investigation is a portable or vehicular sound amplification or reproduction device, or other noise disturbance, the detection of the rhythmic bass component of music is sufficient to verify plainly audible noise.

“Sound” shall mean the oscillation in pressure, stress, particle displacement and particle velocity which induce auditory sensation. The description of sound may include any characteristic of such sound, including duration, intensity, and frequency.

“Sound equipment” shall mean a loud speaker, speakers, public address system, any amplification system or equipment, or any other sound producing device or machine.

“Sound level meter” shall mean a device for measuring the level of noise, music, and all other sounds.

“Vibration” shall mean a temporal and spatial oscillation of displacement, velocity, or acceleration in a solid material, including shaking and pounding.

“Vibration perception threshold” shall mean the minimum or structure-borne motion necessary to cause a person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.

12-2.3 NOISE NUISANCES AND NOISE VIOLATIONS ENUMERATED

- (1) All acts constituting a noise nuisance, as defined above, are declared to be unlawful and a violation of this ordinance, including, but not limited to any of the following enumerated acts, when such enumerated acts are accomplished or carried out in such a manner, or with such volume, intensity, excessiveness, or with continued duration, to annoy, distress, irritate, or disturb the quiet, comfort and contentment of any reasonable person of ordinary sensibilities, within the vicinity or hearing of the person, or as otherwise described herein.
 - a. The playing or permitting or causing to play any amplification devices, loudspeakers, or instruments of any kind, including but not limited to radios, stereos, music players of any kind, karaoke machines, juke boxes, speakers, musical instruments, or any other similar device, machine, or instrument of any kind, that causes music or other sound to be produced, reproduced, or amplified.
 - b. Any loud, excessive, or raucous language of any kind soliciting for, or a description of any amusement house, or business of any kind, from the entrance thereof, the foyer, or lobby thereof or on any sidewalk, street, or right of way.
 - c. The continuous or frequent sounding of any horn or other signal device or other sound on any automobile, motor vehicle, golf cart, motorcycle, bus, bicycle, scooter, or any other motor vehicle or similar equipment except as a danger signal.
 - d. The discharge into the open air of the exhaust of any stationary engine, automobile, motor vehicle, motorcycle, or other similar vehicles or a boat except through a muffler or other device which prevents loud noises therefrom.
 - e. The erection, including construction, as defined above, excavation, demolition, alteration, or repair work, or the permitting or the causing of such acts, or the operation of any tools or equipment used in construction, excavation, drilling, demolition, alteration, or repair work, other than during the hours of 7:00 am through 9:00 pm, as defined above, or at any time where the sound level at or across a real property boundary

exceeds 80dBA This section shall not apply in cases of urgent necessity in the interest of public safety or when authorized and approved by the city Manager or his or her designee, or in cases of public convenience, including city sponsored festivals, parades and permitted special events.

- f. The calling, shouting, or yelling by a person or by a mechanical device, including a “bull horn”, or the use of any whistle, rattle, bell, gong, clapper, hammer, drum, horn, loudspeaker, or any similar device or equipment, including musical instruments or other instruments of any kind.
- g. The loud, excessive, and raucous whistling, yelling, singing, hooting, or crying of peddlers, vendors of any kind, or any other person.
- h. The making or causing to be made noise or sound which exceeds seventy-five (75) decibels on property located in zoning Districts “A” and “E” as defined by Chapter 20 of the City Code of Ordinances (Zoning) when measured from the boundary line of property owned, leased, or occupied by another person or entity.
- i. The making or causing to be made noise or sound which exceeds seventy-eight (78) decibels from property located in zoning districts “B”, “B-2”, and “NT” as defined by Chapter 20 of the City Code of Ordinances (Zoning) when measured from the boundary line of property owned, leased, or occupied by another person or entity.
- j. The making or causing to be made noise or sound which exceeds eighty (80) decibels from property located in zoning districts “C”, “NC”, “TCC”, “PBS” and “PBC” as defined by chapter 20 of the City Code of Ordinances (Zoning) when measured from the boundary line of property owned, leased, or occupied by another person or entity.
- k. The making or causing to be made noise or sound which exceeds eighty-five (85) decibels from property in Districts “BF”, “EDC”, “C-2”, “PDD”, “PBN”, “D”, “D-1”, and “D-2”, as defined by Chapter 20 of the City Code of Ordinances, when measured from property owned, leased, or occupied by another person or entity. Any adjacent property owned, leased, or managed by any person or entity or any affiliate that directly or indirectly controls, is controlled by, or shares common control with the other entity that has an ownership interest, or lease interest in the monitored property shall not be

considered property under separate ownership. lease or occupation for the purposes of determining the boundary lines that may apply to the property that is the source of the noise or sound in question.

- l. All amplification devices, sound equipment, televisions, loud speakers, machines, or instruments of any kind, including but not limited to radios, stereos, music players of any kind, karaoke machines, speakers, musical instruments, or any other device, sound equipment, machine, or instrument of any kind, that causes music or other sound to be amplified or reproduced in an outside or exterior area of any premises, shall be prohibited in zoning districts A and E any time after 10:00 pm from Sunday through Thursday up to 6:59 am, and after 11:00 pm on Friday and Saturday up to 6:59 am.
- m. Seven (7) decibels shall be subtracted for any noise or sound at nighttime, as defined herein, except for property located in Districts "BF", "EDC", "PBN", "PDD", "D", "D-1", and "D-2", as defined by Chapter 20 of the City Code of Ordinances (Zoning).

(2) VIBRATION

It shall be unlawful for any person or entity to create, maintain, or cause any ground or airborne vibration which is perceptible without instruments at any point on any affected property adjoining the property in which the vibration source is located.

(3) VEHICULAR SOUND AMPLIFICATION SYSTEMS

It shall be unlawful for any person or entity operating or controlling or possessing a motor vehicle, golf cart or any other type of vehicle, or self-propelled device or equipment, in either a public or private place within the city limits to operate or cause to operate or use in any manner, whether inside or outside, any sound amplifier of any kind which in part or in whole is connected to any radio, stereo receiver, or any kind of music or sound player, or similar device or equipment, or not connected, and is inside or outside, in any such a manner that, when operated or in use, is audible at a distance of thirty (30) feet from the source of the music, noise or sound, or when being operated or in use, causes a person to be aware of the music, noise, sound, or vibration in any location outside the confines of the vehicle or other equipment described above.

(4) EXEMPTIONS – The provisions of this Chapter 12-2 shall not apply to:

- (1) The emission of sound or noise for the purpose of alerting persons of an emergency.
- (2) Noise produced by emergency vehicles.
- (3) The noise produced by the lawful operation of a motor vehicle under the Texas Transportation Code.
- (4) The noise of a boat motor while the boat is traveling on a public waterway.
- (5) The noise produced by a governmental body in the performance of a governmental function.
- (6) Noise created by a parade and parade spectators on the parade route during a permitted parade, or by an outdoor celebration or event sponsored or co-sponsored by the city for the public, including firework shows and approved and permitted special events.
- (7) Noise produced by the normal operation of an air-conditioning unit, heat pump, pool equipment, generators and other necessary household or business equipment only if the decibel level does not produce a sound exceeding sixty-five (65) decibels on residential property and seventy-five decibels on non-residential properties when measured from fifteen (15) feet from the equipment producing the sound.
- (8) Noise produced, without amplification, for the purpose of encouraging citizen participation in elections.
- (9) The noise generated by any vehicle of the city while engaged in necessary public business.
- (10) The noise generated by any activity regulation thereof that has been preempted by state or federal law, including, but not limited to noise produced by aircraft in flight.
- (12) The noise generated by the normal maintenance of private real or personal property provided the activities take place during daytime hours, as defined herein.
- (13) The noise produced by emergency work necessary to restore public utilities, or to restore property to a safe condition, or to protect persons or property from imminent danger following fire, accident, or natural disaster.
- (14) The noise is produced from activity in which has received written permission from the city, through the City Manager or his or her designee, or has been approved by state or federal authorities,

or is reasonably necessary due to an emergency or recovery therefrom.

(15) The noise generated by any church or other house of worship, or clock carillons, bells, or chimes provided the noise does not cumulatively exceed five (5) minutes duration in any one-hour period.

(16) The noise generated from reasonable activities conducted at public parks and on public playgrounds and public or private school grounds, or public beaches, included but not limited to school athletic and school entertainment events.

(17) The noise generated by any lawful activity that constitutes expression pursuant to the First Amendment of the United States Constitution. By this exception, it is not intended to restrict or extend the rights of citizens to the valid expression of their rights and beliefs. Any such expression retains with it the responsibility to exercise such expression with regard to the rights and sensibilities of others, and within reasonable time and place limitations imposed by other legal standards.

(18) The noise is produced from construction related activity, as defined herein, at any time between the hours of 7:00 am until 9:00 pm.

(5) METHOD OF MEASUREMENT

(1) "Sound level meter" - Whenever portions of this chapter prohibit sound levels over a certain decibel limit, measurement of said sound levels shall be made with standardized meters, using the A-weighted network and and/or the C-weighted network meeting the standards by the American National standards Institute ("ANSI").

(2) "Calibration" – the instruments shall be maintained in calibration and good working order. Calibration corrections shall be employed in meeting the response specifications prior to every sampling event.

(3) "Measurements utilizing a sound level meter". Measurements recorded shall be taken to provide a proper representation of the sound being measured. The microphone shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. Windscreens shall be used whenever appropriate.

(4) "Background sound level measurement". When the sound under investigation can be distinguished, the background sound shall be measured at the same location where the total sound

was measured.

When the sound under investigation cannot be reasonably discontinued, the background sound may be measured at an alternate location. The alternate location shall be as close as feasible to the location of the total sound measurement. Measurements may be taken at a point on adjacent public or private property or on either side of an adjacent public right of way at or near the boundary line of the property where the noise or sound is generated.

The decibel standard for the noise or sound source shall be the standard for the zoning district of the property from which the noise or sound is emitted, as described herein.

(6) IDENTIFICATION OF VIOLATOR

The persons responsible for violations of this chapter (noise ordinance) are identified as follows”

- (1) At private residences. Any adult 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 or in possession of the noise nuisance or noise disturbance generating instrument or property at the time of the offense.
- (3) At any location with an unattended noise nuisance or noise disturbance producing machine, device, instrument, or any other item causing the noise nuisance or noise disturbance, or any combination thereof, any person who leaves unattended any machine, device, instrument, or any item creating the noise nuisance or disturbance, or any combination thereof, which thereafter commences producing noise in violation of this chapter.

(7) PLAINLY AUDIBLE OFFENSES

The provisions of this ordinance are enforceable when any noise is plainly audible in that it can be detected by a peace officer, or other enforcement officer, including code enforcement officers, or any other enforcement official or officer using his or her unaided hearing faculties of normal acuity. A complainant or other witness, other than the peace officer, or other enforcement officer described above, is not necessary to enforce this ordinance.

(8). ENFORCEMENT

This ordinance may be enforced by peace officers, code enforcement officers, or other enforcement officials or officers as may be authorized by law or as may be designated by the City Manager.

SECTION 3. Any violation of the above-mentioned sections of Chapter 12-2 of the Code of Ordinances of the City of South Padre Island is an offense and may be punished by a fine not to exceed Five Hundred Dollars (\$500.00) for each offense and each instance or occurrence is a violation and offense. The penalty provisions of Section 21-1 of the Code of Ordinances is hereby adopted and incorporated for all purposes.

SECTION 4. If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court or competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

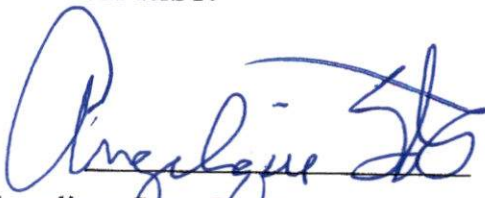
SECTION 5. This Ordinance shall become effective when published in caption form.


PASSED, APPROVED AND ADOPTED on First Reading, the 2nd day of November, 2022.

PASSED, APPROVED AND ADOPTED on Second Reading, the 16th day of November, 2022.

ATTEST:

CITY OF SOUTH PADRE ISLAND, TEXAS


Angelique Soto, City Secretary


Patrick McNulty, Mayor

