

Chapter 16

MISCELLANEOUS PROVISIONS AND OFFENSES*

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ARTICLE I. IN GENERAL

Secs. 16-1--16-25. Reserved.

ARTICLE II. OFFENSES AGAINST PUBLIC SAFETY

DIVISION 1. GENERALLY

Sec. 16-26. Penalty.

Unless stated otherwise, violations of this article shall be punished as provided in section 1-8.

Sec. 16-27. Old refrigerators and iceboxes.

All old refrigerators and iceboxes placed in storage or discarded and not in use shall have the door of such refrigerator or icebox wired closed securely, or all door hinges removed therefrom. (Code 1963, Ch. 10, art. 3, § 1)

Cross reference(s)--Nuisances, Ch. 18.

State law reference(s)--Abandoned iceboxes, etc., V.T.C.A., Health and Safety Code § 756.001 et seq.

Sec. 16-28. Urination and defecation in public.

It shall be unlawful for any person to urinate or defecate in any public place, or in immediate proximity thereto, or in a place which may be viewed from a public place, at a location which has not been designated as a restroom. (Ord. No. 94-41, § I, 5-24-94)

Sec. 16-29. Solicitation of controlled substances.

(a) A person commits an offense if, with intent to acquire a controlled substance, he requests, commands, offers to purchase, or attempts to induce another to sell, donate, or otherwise transfer

***State law reference**--Authority to enforce ordinances necessary to protect and preserve health, property, good government and order, V.T.C.A., Local Government Code § 54.004.

or deliver a controlled substance or dangerous drug to the person.

(b) It is no defense to prosecution under this article that:

- (1) No monetary or other consideration was tendered to the person solicited.
- (2) The person solicited was unable or unwilling to transfer or deliver a controlled substance or dangerous drug.

(c) It is an affirmative defense to any prosecution under this article that:

- (1) The solicitation is made in furtherance of a transaction which would not constitute a violation of any applicable law.
- (2) The solicitation is made by a peace officer, federal law enforcement officer, of a law enforcement agent acting in the lawful discharge of an official duty.

(d) As used in this article, the term “controlled substance or dangerous drug” shall have the same definition given in Texas Health and Safety Code, section 481.002 for “controlled substance” and “federal controlled substance,” as that statute and its schedules may be amended from time to time.

(Ord. No. 95-22, § I, 3-14-95)

Secs. 16-30--16-40. Reserved.

DIVISION 2. WEAPONS

Sec. 16-41. Definition.

For the purposes of this division the following words and phrases shall have the meanings respectively ascribed to them by this section:

Air powered weapon shall mean any paintball gun, BB gun, pellet gun, air rifle or air pistol.

Archery device shall mean any bow, compound bow, crossbow, crossbow pistol or any other device capable of firing an arrow or bolt.

Firearm shall mean any pistol, handgun, rifle or shotgun that fires a projectile through the combustion of gunpowder or propellant.

Indoor archery range shall mean a room, place or enclosure equipped with targets for practice with a bow, compound bow, crossbow, crossbow pistol or any other device capable of firing an arrow or bolt.

Indoor firing range shall mean a room, place or enclosure equipped with targets for practice with any BB gun, pellet gun, air rifle or pistol, gun, pistol or firearm of any description.

Permit holder shall mean the person to which a permit was issued or his guest(s). A person shall be assumed to be a guest if the permit holder is present at the permitted activity and consents to the person’s presence or the person has written permission to participate in the permitted activity from the person to which the permit was issued. Written permission must

include the name, date of birth and home address of the person being given permission.

Shooting gallery shall be as defined in section 5-51.

(Ord. No. 89-16, § III(7-6-5(A)), 2-14-89; Ord. No. 04-30, § I, 4-27-04)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 16-42. Penalty.

Unless stated otherwise, violations of this division shall be punished as provided in section 1-8.

Sec. 16-43. Discharge of firearms.

Except as otherwise regulated by state law and this division, it shall be unlawful to discharge, other than within an indoor firing range or shooting gallery, within the city limits a firearm of any description without first obtaining a permit from the city manager. (Ord. No. 89-16, § III(7-6-5(B)), 2-14-89; Ord. No. 99-62, § I, 8-10-99; Ord. No. 04-30, § I, 4-27-04)

Sec. 16-44. Discharge of air powered weapons or archery device.

1. It shall be unlawful to discharge any air powered weapon or archery device on locations zoned other than A agricultural or A-R1 agricultural single family residential.

2. It shall be unlawful to discharge any air powered weapon or archery device on locations of less than 5 acres in size.

3. It shall be unlawful to discharge a air-powered weapon or archery device in a manner not reasonably likely to contain the fired projectile to the property controlled by the property owner or agent.

(Ord. No. 89-16, § III(7-6-5(C)), 2-14-89; Ord. No. 99-62, § II, 8-10-99; Ord. No. 04-30, § I, 4-27-04)

Sec. 16-45. Discharge of firearm near structures, buildings, roadways.

1. It shall be unlawful for any holder of a permit issued under this division to discharge any firearm within one hundred (100) yards of any occupied residence not owned or controlled by the property owner or his agent.

2. It shall be unlawful for any holder of a permit issued under this division to discharge a firearm on any property less than twenty five (25) acres in size. It is permissible for more than one property owner to join with another property owner in permitting contiguous properties to meet the minimum acreage requirements of this section.

3. It shall be unlawful for any holder of a permit issued under this division to discharge a firearm in a manner not reasonably likely to contain the fired projectile to the permitted property.

(Ord. No. 89-16, § III(7-6-5(E)), 2-14-89; Ord. No. 04-30, § I, 4-27-04)

Sec. 16-46. Exceptions.

Sections 16-43, 16-44, and 16-45 do not apply to:

- a. a peace officer lawfully acting within in the scope of the peace officer's duties;
- b. an authorized agent, officer, employee or representative of a state or federal agency lawfully acting within the scope of that person's duties;
- c. a person acting in self defense;
- d. the discharge of any firearm that does not release a projectile as part of a demonstration at a special event, function or activity, or for signal or ceremonial purposes in athletic events, or by a military organization;
- e. The use of toy bows and soft rubber tipped arrows;
- f. A person acting in defense of livestock or crops.

(Ord. No. 89-16, § III(7-6-5(E)), 2-14-89; Ord. No. 04-30, § I, 4-27-04)

Sec. 16-47. Where permits prohibited.

Permits shall only be issued for locations that are zoned A agricultural or A-R1 agricultural single family residential. No permits shall be issued for areas that do not meet the area or distance requirements of this division. (Ord. No. 89-16, § III(7-6-5(G)), 2-14-89; Ord. No. 99-62, § III, 8-10-99; Ord. No. 04-30, § I, 4-27-04)

Sec. 16-48. Permits for hunting deer.

It shall be unlawful for a permit holder to hunt deer from an elevation less than 10' higher than the animal being hunted on locations less than 50 acres using a centerfire weapon .22 caliber or greater. (Ord. No. 89-16, § III(7-6-5(H)), 2-14-89; Ord. No. 04-30, § I, 4-27-04)

Sec. 16-49. Application for permit.

A person wishing to obtain a permit required by this division must file with the city manager's office an application containing the following information:

- (1) The name and address of the applicant;
- (2) A description of the property, including property line dimensions and total acreage of the property where the weapon will be discharged;
- (3) The name of the owner(s) of the property;
- (4) The type of the weapon to be used; i.e. rifle, shotgun, or handgun, and whether it is a rimfire or centerfire caliber;
- (5) If the applicant is not the property owner(s), a document evidencing that the applicant has the permission of the owner to use the land; and
- (6) The purpose of discharging the weapon, and the time period requested, not to exceed one (1) year.

(Ord. No. 89-16, § III(7-6-5(I)), 2-14-89; Ord. No. 04-30, § I, 4-27-04)

Sec. 16-50. Police review of application.

Upon receipt of an application for a permit required by this division, the city manager shall immediately forward same to the police department. The police department shall have seven (7) working days in which to review the application to determine whether:

- (1) Discharging a weapon in the location requested would affect public safety, health, or welfare; and
 - (2) The applicant has been convicted of a felony or falsified the application.
 - (3) The location must meet the minimum area and distance requirements of this division.
- (Ord. No. 89-16, § III(7-6-5(J)), 2-14-89; Ord. No. 99-62, § IV, 8-10-99; Ord. No. 04-30, § I, 4-27-04)

Sec. 16-51. Action on application.

Upon receiving the report from the police department, the city manager shall, based upon the police department's findings, act upon the application by either issuing or denying the permit, within 10 working days. If the city manager issues the permit, it shall designate a period that corresponds to the reason the permit is requested, but not to exceed one (1) year. (Ord. No. 89-16, § III(7-6-5(K)), 2-14-89; Ord. No. 99-62, § V, 8-10-99)

Sec. 16-52. Possession, display of permit.

Approved permits issued under this division shall be carried on the permit holder's person at any time a firearm or other weapon is discharged or carried on the location that the permit describes, and shall be shown upon the demand of any peace officer. (Ord. No. 89-16, § III(7-6-5(L)), 2-14-89)

Sec. 16-53. Revocation of permits.

(a) A permit issued under this division may be seized by any police officer, and may be revoked by the chief of police, if:

- (1) The permit holder fails to show the permit to a police officer upon request; or
- (2) Complaints from an adjacent property owner or a law enforcement officer are received that allege unsafe weapon handling or discharge; or
- (3) The permit holder is carrying or discharging a firearm of a type not specifically indicated on the permit; or
- (4) The landowner requests revocation of all or specific permits issued for his land; or
- (5) Violations of any of the restrictions in this division occur.

(b) If the chief of police revokes a permit issued hereunder, he shall send to the permit holder, by certified mail, return-receipt requested, written notice of the revocation, the reason therefore, and the right to appeal.

(c) The chief of police shall send a copy of the written notice of revocation to the city manager, who shall provide copies of such notice to the city council.

(d) A permit holder who has his permit revoked shall not be issued another permit under this division for a period of ninety (90) days from the date of revocation for the first revocation and for a period of one year for any subsequent revocation.

(Ord. No. 89-16, § III(7-6-5(M)), 2-14-89; Ord. No. 04-30, § I, 4-27-04)

Sec. 16-54. Appeals procedure.

(a) A permit applicant or holder may appeal the denial or revocation of a permit hereunder to the city council subject to the following requirements:

- (1) The appeal must be in writing and filed with the city manager's office within five (5) working days of the denial or revocation action;
- (2) The appeal must clearly set out the basis of such appeal;
- (3) The hearing shall be scheduled for the next regular city council meeting no earlier than ten (10) days after receipt of the appeal from the city council to evaluate all evidence and testimony regarding the permit denial or revocation and appeal.

(b) The city council shall formally act upon the appeal at the meeting and the city council's decision shall be binding on all parties.

(Ord. No. 89-16, § III(7-6-5(N)), 2-14-89; Ord. No. 99-62, § VI, 8-10-99)

Secs. 16-55--16-60. Reserved.

DIVISION 3. FALSE ALARMS*

Sec. 16-61. Definitions.

The following words and terms, as used in this article, have the meanings respectively ascribed to them as follows:

Alarm site shall mean a single premises or location (one (1) street address) served by an alarm system or systems that are under the control of one (1) owner.

Alarm system shall mean a device or system arranged to signal the presence of a hazard requiring urgent attention and to which the department is expected to respond. Systems commonly referred to as "burglar alarm systems," "holdup alarms," and "panic/alert systems" are included. "Alarm system" does not include:

- (1) An alarm installed on a vehicle, unless the vehicle is permanently located at a site; nor
- (2) An alarm designed to alert only the inhabitants of a premises with no audible exterior alarm or automatic dialing device.

Alarm user shall mean the owner, agent or person in control of the premises where an alarm system is maintained within the city, except for the alarm systems on motor vehicles. If, however, an alarm system on a motor vehicle is connected with an alarm system on a premises, the person using such system is an alarm user.

Automatic dialing device shall mean and refer to an alarm system which automatically sends over regular telephone lines, by direct connection or otherwise, a prerecorded voice message or coded signal indicating the existence of the emergency situation that the alarm system is designed to detect.

Burglar alarm system shall mean and refer to an alarm system signaling an entry or

***Editor's note**—Ordinance No. 95-19, § I, adopted February 28, 1995, amended Ch. 16, Art. II by adding a new Div. 3, but did not provide for specific designation of sections; hence, codification of such new provisions as §§ 16-61–16-69 was at the discretion of the editor.

attempted entry into the area protected by the system.

Commercial establishment shall mean a structure intended or used for the purpose of conducting a commercial business enterprise.

Department shall mean the city police department.

Direct connect shall mean an alarm system which has the capability of transmitting system signals to and receiving them at an agency or site designated by the department.

Direct line shall mean a telephone line, leading directly from a central station or modified central station to the communications center of the department, that is for use only to report emergency signals on a person-to-person basis.

False alarm shall mean the activation of an alarm system which is not the result of an emergency or threat of emergency for which the alarm system was designed to give notice and for which the responding police officer finds no evidence of any criminal activity. This term shall include activation of an alarm system through mechanical or electronic failure, malfunction, improper installation or the negligence of the owner or lessee of an alarm system, or of their employees or agents. The department may not consider a false alarm to have occurred unless a response is made by an agency of the municipality within 30 minutes of the alarm notification and the agency determines from an inspection of the interior or exterior of the premises that the alarm was false. This term shall not include activations which result from any of the following:

- (1) Alarms caused by an attempted illegal entry of which there is visible evidence, illegal entry, or other demonstrable criminal activity.
- (2) Alarms caused by the failure or malfunction of the monitoring equipment located in the department.
- (3) Any activation of an alarm system which is caused by hurricanes, tornadoes, earthquakes, gale force winds or higher, thunderstorms or electrical storms, utility power surges, or surges through phone lines.
- (4) Alarms occurring on a repeated basis without apparent cause, but where continuous decided effort, in the sole opinion of the department, is being made jointly by the alarm vendor, alarm user (for installation or servicing), and any other concerned person to correct the malfunction expeditiously.
- (5) Alarms intentionally caused by a person acting under a reasonable belief that an emergency exists.
- (6) Alarms followed by an immediate call to the department by the alarm monitoring company canceling the alarm, such call having been made prior to the arrival of any officer.
- (7) Alarms resulting from the servicing of an alarm system by an alarm business when, prior to such repair or service, the alarm user or their agent has notified the department, in person or by call, giving the proper code number, that the alarm system will be repaired or serviced at the particular date and time coinciding with that alarm.
- (8) Alarms caused by an animal, provided that actions of the animal were beyond the control and prevention of the alarm user.

(Ord. No. 95-19, § I, 2-28-95; Ord. No. 05-95, § I, 10-11-05)

Sec. 16-62. Local audible alarms; limits on operation.

All alarm systems equipped with any exterior sound-producing device, including, but not limited to, gongs, buzzers, sirens, bells or horns, shall be equipped with a time device which limits the operation of such sound-producing device to a continuous ten (10) minutes; except that commercial establishments shall be allowed a continuous twenty (20) minutes of operation of the sound-producing devices. (Ord. No. 95-19, § I, 2-28-95)

Sec. 16-63. Restrictions on automatic dialing devices.

No automatic dialing shall be keyed to the department or otherwise connected to the department terminals. Any alarm systems which are keyed to a primary or secondary trunkline of the department shall be immediately disconnected therefrom at the expense and responsibility of the owner or lessee of the system. Failure to disconnect any automatic dialing device which is keyed to the department shall constitute a violation of this article [division]. (Ord. No. 95-19, § I, 2-28-95)

Sec. 16-64. Direct monitoring of financial institutions.

A financial institution may install, with the permission of the department, an alarm system that is monitored directly by the department. The installation must be accomplished at the institution's expense. (Ord. No. 95-19, § I, 2-28-95)

Sec. 16-65. Notification required.

In the absence of other corroborating information, an alarm systems monitor shall make two attempts to contact the occupant of the alarm system location before the department will respond to the alarm signal. (Ord. No. 95-19, § I, 2-28-95; Ord. No. 05-95, § I, 10-11-05)

Sec. 16-66. Appeal of false determination.

(a) If an alarm user believes that the department's determination that an alarm was false is unjustified, then the alarm user may appeal that determination by filing a notice of appeal with the city manager's office within ten (10) calendar days of the date of notice to the alarm user by the department of the false alarm. In the notice of appeal, the alarm user shall set out the specific basis upon which such user is contesting the false determination.

(b) The city manager, or a representative designated by the city manager, shall act as a hearing officer and shall conduct a hearing to determine whether to reclassify the alarm as valid. The burden of proof shall be upon the alarm user. At the hearing, the hearing officer shall not be bound by the rules of evidence applicable in a court proceeding but may rely upon that evidence which a reasonable person would rely upon in reaching a decision. The hearing officer may request additional information from the alarm user or the department.

(c) The hearing shall be conducted within a reasonable time after the notice of appeal is filed. During the time the appeal is pending, the contested alarm shall not be considered in determining the number of false alarms occurring during a 12-month period. At the conclusion of the hearing, the hearing officer shall provide the alarm user and the department with written notice of his determination within a reasonable time.

(d) The determination of the city manager or his designee shall be final.

(Ord. No. 95-19, § I, 2-28-95; Ord. No. 05-95, § I, 10-11-05)

Sec. 16-67. Service fee.

Effective upon the occurrence of the fourth false burglar alarm, a service fee shall be assessed against the alarm user as follows:

- (1) \$50, if the location has had more than three but fewer than six other false alarms in the preceding 12-month period;
- (2) \$75, if the location has had more than five but fewer than eight other false alarms in the preceding 12-month period; or
- (3) \$100, if the location has had eight or more other false alarms in the preceding 12-month period.

(Ord. No. 95-19, § I, 2-28-95; Ord. No. 05-95, § I, 10-11-05)

Sec. 16-68. Collection of service fees.

All service fees authorized in this division shall be billed and collected by the finance department, according to its procedures. (Ord. No. 95-19, § I, 2-28-95)

Secs. 16-69--16-75. Reserved.

ARTICLE III. OFFENSES AGAINST PUBLIC PEACE AND ORDER*

Sec. 16-76. Purpose; definitions.

(a) The purpose of this article is to control excessive noise and vibration that interferes with the comfortable enjoyment of life, property, recreation, and conduct of business as defined and described in this article.

(b) As used in this article, the following words and terms shall have the meanings respectively ascribed:

Ambient noise shall mean background or surrounding noise.

A-weighted sound level shall mean the sound pressure level in decibels as measured on a sound level meter using the A-weighted network, fast response.

C-weighted sound level shall mean the sound pressure level in decibels as measured on a sound level meter using the C-weighted network, fast response.

City manager shall also mean the city manager's designee.

Elapsed time average shall mean the A-weighted or C-weighted sound level, fast response, emanating from a source during one (1) hour, by sampling the sound level for a continuous period of three (3) minutes and recording the average sound level for that period; then repeating

***Editor's note**—Ordinance No. 91-32, § I, adopted May 28, 1991, amended Art. III, §§ 16-76–16-82 to read as set forth herein. Prior to such amendment, §§ 16-76–16-82 contained similar provisions and derived from Ch. 7, art. 6, §§ 4, 7, 13 and Ch. 7, art. 9, §§ 1–4 of the 1963 Code.

the sampling process on one (1) other occasion during the hour; and then, averaging the two (2) readings together (adding the two (2) readings and dividing the sum by two (2)).

Impulsive sound means sound of short duration, usually less than one (1) second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.

Nighttime shall mean the hours between 11:00 p.m. and 7:00 a.m.

Noise nuisance means any loud, irritating, vexing, disturbing, or unreasonable sound which causes distress, annoyance, discomfort or injury to or which interferes with the comfort or repose of any reasonable person of ordinary nervous sensibilities in the vicinity or hearing thereof, or any sound which endangers or injures the safety or health of humans or animals, or any sound which interferes with the physical well-being of humans or animals, or any sound which endangers or injures person or real property.

Public place means any public road, street or alley, inn, tavern, store, grocery or workshop, or a place in which people are assembled or to which people commonly resort for purposes of business, amusement, recreation, or other lawful purposes.

Sound level shall mean the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network such as A or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4-1971).

Sound level meter shall mean an instrument which includes a microphone, amplifier, RMS detector, integrator, or time averages, output meter, and weighing network used to measure sound pressure levels.

Vibration perception threshold means the minimum ground- or structure-borne vibrational motion necessary to cause a reasonable 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.
(Ord. No. 91-32, § 1, 5-28-91; Ord. No. 94-27, § I, 4-12-94; Ord. No. 03-45, § I, 8-26-03)

Sec. 16-77. General restrictions.

A person may not:

- (a) create a noise in excess of the decibel limits prescribed by this article;
- (b) make noise or play a musical instrument or other equipment plainly audible to a nearby business or residence during the nighttime;
- (c) operate, permit, or cause the operation of any device that creates vibration which is above the vibration perception threshold of an individual at or beyond the property of the source if on private property, or at fifty (50) feet from the source if in a public space or public right-of-way.
- (d) create, generate, produce, or emanate an unreasonable noise or noise nuisance which, by its manner, volume, intensity, or duration, is such as to annoy, distress or disturb the comfort or repose of any reasonable person of ordinary nervous sensibilities within the vicinity or hearing thereof; or so as to endanger or injure the safety or health of humans or animals; or so as to interfere with the physical well being of humans or animals; or so

as to endanger or injure personal or real property.
(Ord. No. 03-45, § I, 8-26-03; Ord. No. 09-065, § I, 9-22-09)

Sec. 16-78. Noise nuisance enumeration.

(a) It shall be unlawful to create, generate, produce or emanate an unreasonable noise or noise nuisance which, by its manner, volume, intensity, or duration is such as to annoy, distress or disturb the comfort or repose of any reasonable person of ordinary nervous sensibilities within the vicinity or hearing thereof; or so as to endanger or injure the safety or health of humans or animals; or so as to interfere with the physical well being of humans or animals; or so as to endanger or injure personal or real property. Unreasonable noise nuisance includes, but is not limited to, the following acts:

- (1) The playing or permitting, or causing the playing, of any radio, television, phonograph, drum, jukebox, nickelodeon, musical instrument, sound amplifier or similar device which produces, reproduces, or amplifies sound, whether such device is operated at a fixed location or in a vehicle.
- (2) The gathering, on public or private property, of any number of persons at any time, when the cumulative noise of the gathering, whether from human voices or other sources, or from a combination of human voices and other sources, causes unreasonable disturbance to any person or animal located within the range of hearing of such gathering.
- (3) The keeping of any animal, fowl, or bird, which makes frequent or long, continued noise.
- (4) The continued or frequent sounding of any horn or other signal device on any automobile, truck, motorcycle, bus or other vehicle, except as a danger signal.
- (5) The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, automobile, truck, motorcycle, or other motor vehicle or boat, except through a muffler or other device which prevents loud or explosive noises therefrom.
- (6) The crying, calling, or shouting, in person or by a mechanical device, or the use of any whistle, rattle, bell, gong, clapper, hammer, drum, horn, loudspeaker or phonograph with or without an amplifier, hand organ, or other devices or instruments, musical or otherwise, for the purpose of advertising any candidates for elective office, any goods, wares, or merchandise, or for the purpose of attracting attention to or inviting persons to any political rally, meeting or gathering, to any place of amusement, to any performance or show, or to any business or activity whatsoever.
- (7) The raucous shouting, whistling, yelling, singing, hooting, or crying of peddlers, hawkers, vendors or any other persons.
- (8) The use of any automobile, bus, motorcycle, truck, van or other vehicle, so out of repair or so loaded, that it emits or creates loud grating, grinding, or rattling noise.

(b) A peace officer, consistent with the law of this state, may arrest any person who violates any provision of this article in the officer's presence; such officer shall also have authority to issue citations for violation of this article without arresting the offender; provided, however, that in no case shall arrest and citation be mutually exclusive of each other as actions available to the officer in any particular case.

(Ord. No. 91-32, § 1, 5-28-91; Ord. No. 94-27, § II, 4-12-94; Ord. No. 03-45, § I, 8-26-03)

Sec. 16-79. Restriction on decibel level.

(a) It shall be unlawful to create, generate, produce or emanate an unreasonable noise or noise nuisance when, using the A-weighted scale, fast response, it exceeds 3 decibels over the ambient noise, or a maximum of 50 decibels, whichever is higher, or using the C-weighted scale, fast response, it exceeds 5 decibels over the ambient noise, or a maximum of 60 decibels, whichever is higher. Measurement shall be taken at the property line of the noise-producing property, or beyond, in accordance with sec. 16-81(e).

(b) Regardless of the measurable decibels level established above and measured as provided in section 16-81(e), it shall be unlawful to generate, produce or emanate an unreasonable noise or noise nuisance which, by its manner, volume, intensity, or duration is such as to annoy, distress or disturb the comfort or repose of any reasonable person of ordinary nervous sensibilities within the vicinity or hearing thereof; or so as to endanger or injure the safety or health of humans or animals; or so as to interfere with the physical well being of humans or animals; or so as to endanger or injure personal or real property.

(c) A peace officer, consistent with the law of this state, may arrest any person who violates any provision of this article in the officer's presence; such officer shall also have authority to issue citations for violation of this article without arresting the offender; provided, however, that in no case shall arrest and citation be mutually exclusive of each other as actions available to the officer in any particular case.

(Ord. No. 91-32, § 1, 5-28-91; Ord. No. 94-27, § III, 4-12-94; Ord. No. 03-45, § I, 8-26-03)

Sec. 16-80. Exceptions.

(a) The provisions of this article shall not apply to:

- (1) Sound generated by emergency vehicles or for the purpose of alerting persons to an emergency;
- (2) Sound produced by a vehicle motor while the vehicle is moving on a public right-of-way, public waterway, airport runway, or railway, except as regulated under subsection 16-78(a)(8) above;
- (3) Sound produced by any governmental body in the performance of a governmental function;
- (4) Sound generated at or by a parade route during a lawful and permitted parade, a scheduled stadium event, or at outdoor celebrations sponsored or co-sponsored by the city or any governmental body in the performance of its duty, or as otherwise allowed by law; or
- (5) The activity, operation, noise, or vibration source emanates from an operation or activity (including, by way of example only, but not limited to, construction, reconstruction, remodeling, and rebuilding of any structure or place in conformity with applicable provisions of this code and state law) that cannot reasonably be done in an alternative manner, time, or place so as to otherwise comply with this article.

(b) Applications for a permit for relief from the noise and vibration restrictions designated in this article on the basis of undue hardship may be made to the city manager. Each application must be accompanied by a fifty-dollar fee. The relief requested may be granted upon a good and sufficient showing:

- (1) That additional time is necessary for the applicant to alter or modify his activity or

- operation to comply with the provisions of this article;
- (2) That the activity, operation, noise or vibration source will be of temporary duration and cannot reasonably be done in a manner that would comply with this article; or
 - (3) That no reasonable alternative is available to the applicant.

(c) If granted, the permit shall be in writing and contain all conditions upon which such permit is granted, including, but not limited to, the effective dates, any time-of-day, location, sound-pressure-level, or equipment limitations. The city manager may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding area.

(d) In the event the city manager denies an application for a permit for relief from the noise and vibration restrictions designated in this article, or grants relief under conditions the applicant finds unacceptable, the affected party may appeal the decision to the city council by filing a written letter with the city manager within ten (10) calendar days after receiving notice of the city manager's decision. The appeal letter must specifically state each and every point of contention with the city manager's determination. The city manager shall immediately cause the appeal to be placed on the next regular meeting agenda of the city council for discussion and action. At that meeting, the city council shall consider the standards contained in this article, the city manager's reasons for denying a permit or applying conditions, the points raised in the letter of appeal, and relevant surrounding facts.

(Ord. No. 91-32, § 1, 5-28-91; Ord. No. 94-27, § IV, 4-12-94; Ord. No. 03-45, § I, 8-26-03)

Sec. 16-81. Enforcement.

(a) *Administrative stop order.* The building official, his designee, or his duly authorized noise abatement officers may issue an order to any person having possession or control over noise-generating property to immediately halt any sound which exposes any person to continuous or impulsive noise levels that are unreasonably loud, disturbing, or raucous. Within five (5) days following issuance of such an order, the building official or his duly authorized representative may apply to the appropriate court for an injunction to replace the administrative stop order.

(b) *Identification of violator.* The persons responsible for violations of this article 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 or in possession of the noise nuisance-generating instrument or property at the time of the offense.
- (3) *At any location with an unattended noise nuisance-producing machine, device, instrument, child, animal, or combination of same.* Any person who leaves unattended any machine, instrument, device, child, animal, or any combination of same, which thereafter commences producing noise in violation of this article.

(c) *Authority of peace officer.* Subject to subsection (d) below, a peace officer, consistent with the law of the state, may arrest any person who violates any provision of this article in such

officer's presence. Such officer shall also have authority to issue citations for violation of this article without arresting the offender; provided, however, that in no case shall arrest and citation be mutually exclusive of each other as actions available to the officer in any particular case.

(d) *Method of noise measurement.* Whenever portions of this article prohibit noise over a certain decibel limit, measurement of the noise shall be made with a decibel meter meeting the standards prescribed by the American Standards Association and using the A-weighted or C-weighted scale, fast response. Measurements shall be taken so as to provide a proper representation of the noise being measured. The microphone shall be placed three to five feet above ground level, when possible, and positioned so as not to create any unnatural enhancement or diminution of the measured noise. Traffic, aircraft, and other transportation noise shall not be considered in taking measurements, except where such background noise interferes with the primary noise being measured.

(e) *Determination of violation.* An arrest, citation, summons, or complaint for the violation of any part of this article must be based on probable cause arising from:

- (1) The complainant's physical sense perceptions and observations of the unreasonable noise or vibration, as defined herein, at the time such is occurring; or
- (2) Sound level measurements, taken in accordance with this article, which exceed the stated limits; or
- (3) A combination of the foregoing two (2) types of evidence.

(Ord. No. 91-32, § 1, 5-28-91; Ord. No. 94-27, § V, 4-12-94; Ord. No. 03-45, § I, 8-26-03; Ord. No. 09-065, § I, 9-22-09)

Sec. 16-82. Penalties.

Any person who violates any portion of this article is guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not less than one hundred (\$100.00), nor more than two thousand dollars (\$2,000.00). For the second or subsequent conviction within a twelve-month period, such person shall be fined not less than two hundred fifty dollars (250.00), nor more than two thousand dollars (\$2,000.00). (Ord. No. 91-32, § 1, 5-28-91; Ord. No. 03-45, § I, 8-26-03; Ord. No. 09-065, § I, 9-22-09)

Sec. 16-83. Culpable mental state not required.

An offense under this chapter shall not require a culpable mental state. (Ord. No. 03-45, § I, 8-26-03)

Sec. 16-84. Riding wild horses on street.

Whosoever in this city shall ride or cause to be ridden along any street or alley, or upon the public square any wild or unbroken horse, mare, gelding, or mule, knowing it at the same time to be wild and unbroken shall be guilty of a misdemeanor. (Ord. No. 91-32, § 1, 5-28-91)

Secs. 16-85--16-105. Reserved.

ARTICLE IV. OFFENSES AGAINST PUBLIC AUTHORITY

Sec. 16-106. Penalty.

Unless stated otherwise, violations of this article shall be punished as provided in section 1-8.

Sec. 16-107. Interfering with or obstructing officer.

Any person who may interfere with, obstruct, hinder, prevent, or attempt to prevent any officer of the city in the discharge of his duty shall be deemed guilty of a misdemeanor. (Code 1963, Ch. 7, art. 4, § 1)

Sec. 16-108. Mistreatment of police dogs.

It shall be unlawful for any person to willfully or maliciously torture, torment, beat, kick, strike, mutilate, injure, disable or kill any dog used by the police department in the performance of the functions or duties of such department, or to interfere with or meddle with any such dog while being used by the department or any officer or member thereof in the performance of any of the duties or functions of the department or of such officer or member. Any person violating any provision of this section shall be deemed guilty of a misdemeanor. (Code 1963, Ch. 7, art. 4, § 7)

ARTICLE V. YOUTH CURFEW

Sec. 16-109. Definitions.

For the purposes of this article, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Curfew hours means:

- (1) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and
- (2) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.
- (3) Notwithstanding (1) and (2), from June 1 to August 15 of each year, curfew hours shall be from 12:01 a.m. on any day until 6:00 a.m.

Emergency shall include, but not be limited to, fire, natural disaster, an automobile accident or seeking immediate medical treatment for any person.

Interstate transportation means transportation between states of the United States or between a state of the United States and a foreign country, to which any travel through the city is merely incidental.

Intrastate transportation means transportation between locations within the state, to which any travel through the city is merely incidental.

Minor shall mean any person under seventeen (17) years of age.

Parent shall mean a person who is the natural or adoptive parent of minor. As used herein

“parent” shall also include a court-appointed guardian or other person twenty-one (21) years of age or older who has been authorized by the parent, by a court order, or by the court-appointed guardian to have the care and physical control of a minor.

Public place means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets and highways, and the common areas of schools, hospitals, apartment houses, office buildings, transportation facilities, restaurants and shops.

(Ord. No. 92-46, § I, 8-11-92; Ord. No. 96-61, § I, 7-23-96; lapsed 07-23-99; re-adopted Ord. No. 99-69, § I, 9-14-99; Ord. No. 02-33, § I, 8-27-02; Ord. No. 05-59, § I, 8-16-05; Ord. No. 08-052, § I, 7-22-08)

Sec. 16-110. Offenses.

(a) It shall be unlawful for any minor to intentionally or knowingly remain, walk, run, stand, drive or ride about in or upon any public place in the city during curfew hours.

(b) It shall be unlawful for a parent of a minor to knowingly allow or permit the minor to be in violation of the curfew imposed in subsection (a) of this section. The term “knowingly” includes knowledge which such parent should reasonably be expected to have concerning the whereabouts of a minor in the parent’s care. It shall be prima facie evidence of violation of this section if a responsible parent has no knowledge of a minor’s whereabouts during the hours of curfew established by this ordinance.

(c) It shall be unlawful for any owner, operator, or employee of any privately owned place of business operated for a profit to which the public is invited, to knowingly allow a minor to remain upon the premises of said place of business during curfew hours.

(Ord. No. 92-46, § I, 8-11-92; Ord. No. 96-61, § I, 7-23-96; lapsed 07-23-99; re-adopted Ord. No. 99-69, § I, 9-14-99; Ord. No. 02-33, § I, 8-27-02; Ord. No. 05-59, § I, 8-16-05; Ord. No. 08-052, § I, 7-22-08)

Sec. 16-111. Defenses.

It is a defense to prosecution under section 16-110 that, at the time of the act that otherwise would constitute an offense:

- (1) The minor was accompanied by his or her parent;
- (2) The minor was accompanied by an adult twenty-one (21) years of age or older approved by the parent;
- (3) The minor was on an emergency errand;
- (4) The minor was attending a school, religious or government-sponsored activity, or going to or coming from a school, religious or government-sponsored activity;
- (5) The minor was engaged in a lawful employment activity or labor organization meeting, or going to or coming from said lawful employment or labor organization meeting;
- (6) The minor was on the premises of the place where such minor resides or on the premises of a next-door neighbor, and said neighbor was not communicating an objection to a peace officer regarding the presence of said minor;
- (7) The minor was upon an errand directed by his or her parent;
- (8) The minor was in an aircraft or motor vehicle involved in intrastate or interstate

transportation, or was awaiting transportation by such means;

- (9) The minor was exercising his or her First and Fourteenth Amendment rights protected by the United States Constitution, including but not limited to, the free exercise of religion, freedom of speech, and the right of assembly; or
 - (10) The minor was married or had been married or had disabilities of minority removed in accordance with the Texas Family Code.
 - (11) In a prosecution under section 16-110(c), the owner, operator or employee of the place of business promptly notified the police department that a minor was present on the premises of the business during curfew hours and refused to leave.
- (Ord. No. 92-46, § I, 8-11-92; lapsed 07-23-99; re-adopted Ord. No. 99-69, § I, 9-14-99; Ord. No. 02-33, § I, 8-27-02; Ord. No. 05-59, § I 8-16-05; Ord. No. 08-052, § I, 7-22-08)

Sec. 16-112. Enforcement procedures.

Any peace officer, upon finding a minor in violation of section 16-110, may:

- (a) Order the minor to go directly and promptly to his home, after issuing either a verbal warning, a written warning or a citation; or
- (b) Release the minor to a parent, legal guardian or other responsible adult under circumstances deemed appropriate by the officer, after issuing either a verbal warning, written warning or a citation.

- (1) When a minor is released to a parent, legal guardian or other responsible adult, the adult shall be informed of the specific violation, the nature and purpose of the law, and the consequences of future violations. The peace officer has the discretion to issue either a verbal warning, written warning or a citation to the minor's parent, legal guardian, or a responsible adult into whose care the minor was placed.

(Ord. No. 92-46, § I, 8-11-92; Ord. No. 96-61, § I, 7-23-96; lapsed 07-23-99; re-adopted Ord. No. 99-69, § I 9-14-99; Ord. No. 02-33, § I 8-27-02; Ord. No. 05-59, § I 8-16-05; Ord. No. 08-052, § I, 7-22-08)

Sec. 16-113. Penalties.

(a) Any minor violating the provisions of this article shall be guilty of a Class C misdemeanor as defined by the Texas Penal Code and shall be dealt with in accordance with the provisions of Title 3 of the Texas Family Code, and the Texas Code of Criminal Procedure.

(b) A parent who violates subsection 16-110(b) or a person who violates subsection 16-110(c) shall be guilty of a misdemeanor, which shall be punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00).

(c) In assessing punishment for either a parent or minor, the municipal court judge may consider a community service or teen court program.

(Ord. No. 92-46, § I, 8-11-92; lapsed 07-23-99; re-adopted Ord. No. 99-69, § I, 9-14-99; Ord. No. 02-33, § I, 8-27-02; Ord. No. 05-59, § I, 8-16-05; Ord. No. 08-052, § I, 7-22-08)

Sec. 16-114. Continuing evaluation.

This ordinance shall be reviewed every third year after passage, as required by Local

Government Code section 370.002, as amended. Such review shall be conducted following public hearings upon the need to continue the ordinance, and the city council shall have the option to continue, abolish or modify the ordinance based upon its review of the ordinance's effects on the community and on the problems the ordinance is intended to remedy. (Ord. No. 96-61, § I, 7-23-96; lapsed 07-23-99; re-adopted Ord. No. 99-69, § I, 9-14-99; Ord. No. 02-33, § I, 8-27-02; Ord. No. 05-59, § I, 8-16-05; Ord. No. 08-052, § I, 7-22-08)

ARTICLE VI. POSSESSION OF TOBACCO

Sec. 16-115. Definitions.

(a) *Minor* - a person less than eighteen (18) years of age.

(b) *Tobacco Product* --

(1) a cigar;

(2) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette;

(3) chewing tobacco, including Cavendish, Twist, plug scrap, and any kind of tobacco suitable for chewing;

(4) snuff or other preparations of pulverized tobacco; or

(5) an article or product that is made of tobacco or a tobacco derivative.

(Ord. No. 96-14, § I, 3-12-96)

Sec. 16-116. Offenses.

It is unlawful for a minor to:

(1) possess a tobacco product;

(2) purchase a tobacco product;

(3) state that he or she is eighteen (18) years of age or older in order to facilitate their purchase of tobacco products;

(4) present false or misleading documentation that he or she is eighteen (18) years of age or older in order to facilitate their purchase of tobacco products.

(Ord. No. 96-14, § I, 3-12-96)

Sec. 16-117. Defenses.

It is a defense to prosecution under sec. 16-115 that at the time of possession of a tobacco product, the minor was a legal employee of a business holding proper permits to serve as a distributor, wholesaler, bonded agent, or retailer of tobacco products, such possession being for the purpose of carrying out the business of the permittee. (Ord. No. 96-14, § I, 3-12-96)

Sec. 16-118. Enforcement.

(a) A police officer may stop and detain a person whom the officer has reasonable suspicion to believe is in violation of this ordinance. If, after investigating the circumstances, the police officer reasonably believes that an offense has occurred, the defense of sec. 16-116 does not apply, and the detained person is unable to produce convincing evidence that he or she is

eighteen (18) years of age or older, the police officer may issue a citation or make an arrest for the violation of this ordinance.

(b) In assessing punishment, a municipal court judge may consider community service, a tobacco education program or a teen court program. If the municipal court judge assesses participation in a tobacco education program or community service in lieu of a fine upon conviction for a violation of this ordinance he shall require the completion of the community service or tobacco education program within thirty (30) days of conviction.
(Ord. No. 96-14, § I, 3-12-96)

Sec. 16-119. Penalty.

(a) Any person who violates any provision of this chapter is guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars (\$10.00) or more than five hundred dollars (\$500.00) for each offense.

(b) Each day a violation is permitted to exist shall constitute a separate offense, and shall be punishable as such.
(Ord. No. 96-14, § I, 3-12-96)

Secs. 16-120–129. Reserved.

ARTICLE VII. RETURN OF LIBRARY MATERIALS

Sec. 16-130. Failure to return library materials.

(a) Any person who has outstanding Killeen public library fees for overdue materials or an unpaid fine (provided for below) shall be disallowed from further borrowing until the fees have been paid or the overdue materials returned.

(b) It shall be unlawful for any person who has borrowed library material or who, as a parent or guardian, has agreed to be responsible for library materials borrowed by another person, to fail to return such library materials after the expiration of ten (10) days after receiving written notice demanding the return of such library materials. Notice shall be given by regular mail to the address shown on the person's application to borrow library materials or to the person's last known address if such address is different from the address shown on such application. A notice sent by regular mail to the person's address, as set forth above, shall be deemed to have been received by the person upon the third regular postal day after its deposit in the U.S. mail.

(c) In any prosecution charging a violation of subsection (b) above, proof that library materials were borrowed on the library card of a person shall constitute in evidence a prima facie presumption that such person was the person who borrowed the library materials.

(d) In any prosecution under this section, it is no defense that the person no longer possesses the library materials.
(Ord. 98-84, § I, 12-22-98)

Sec. 16-131. Penalty.

(a) Any person who violates any provision of this chapter is guilty of a misdemeanor and, upon conviction, shall be fined up to, but not to exceed \$500.00 for each offense.

(b) Each day a violation is permitted to exist shall constitute a separate offense for each unreturned item, and shall be punishable as such.

(c) In addition to a fine, the court may order restitution be paid, based upon replacement value of the unreturned material.

(Ord. 98-84, § I, 12-22-98)

Secs. 16-132—139. Reserved.

ARTICLE VIII. SEXUAL PREDATOR RESIDENCY

Sec. 16-140. Definitions.

For the purposes of this article, the following terms, words, and the derivation thereof shall have the meanings given herein.

(a) *Day care center* shall mean a child care facility that is registered, licensed or listed by the state of Texas.

(b) *Minor*. A minor is a person younger than seventeen (17) years of age.

(c) *Permanent residence*. A place where a person abides, lodges, or resides for fourteen (14) or more consecutive days.

(d) *Person* includes an individual, firm, corporation or other business entity.

(e) *Premises where children commonly gather*. Public parks, private and public schools, amusement arcades, video arcades and youth centers as defined in article 481.134 of the Health and Safety Code of the state of Texas, indoor and outdoor amusement centers that cater primarily to children, amusement parks, public commercial and semi-private swimming pools, child daycare centers, the Killeen municipal golf course, and public or private school or daycare bus stop. For the purposes of this code, planted street medians are not public parks.

(f) *Temporary residence*.

1. A place where a person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address; or

2. A place where a person routinely abides, resides, or lodges for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

(Ord. No. 07-040, § I, 5-8-07)

Sec. 16-141. Offenses.

(a) For each person required to register on the Texas Department of Public Safety's "Public" sex offender database (the "database") under chapter 62, Code of Criminal Procedure, because of a reportable conviction or adjudication involving a victim younger than seventeen (17) years of age or who has been civilly committed as a sexually violent predator under chapter 841, Health and Safety Code, and is subject to outpatient treatment and supervision under that chapter, it shall be unlawful for that person to establish a permanent residence or temporary residence within 2,000 feet of any premise where children commonly gather, as defined in section 16-140(e).

(b) It is unlawful to lease, rent or otherwise provide any residence, dwelling, place, structure or part thereof, manufactured home, trailer, or other conveyance, with the knowledge that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to the terms of this section, if such place, structure or part thereof, manufactured home, trailer or other conveyance is located within 2,000 feet of any premises where children commonly gather, as defined in section 16-140(e).

(Ord. No. 07-040, § I, 5-8-07)

Sec. 16-142. Evidentiary matters; measurements.

(a) It shall be prima facie evidence that this article applies to such a person if that person's record appears on the database and the database indicates that the victim was less than seventeen (17) years of age.

(b) For the purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent or temporary residence to the nearest property line of the premises where children commonly gather, as described herein above, or,

(1) in the case of multiple residences on one property, measurement is from the nearest property line of the residence premises following a straight line to the nearest property line of the premises where children commonly gather, or

(2) in the case of a bus stop, measurement is from the center point of the stop following a straight line to the property line of the permanent or temporary residence.

(c) A map depicting the prohibited areas shall be maintained by the city of Killeen. The city shall review the map every 3 months for changes. Said map will be available to the public at the Killeen police department.

(Ord. No. 07-040, § I, 5-8-07)

Sec. 16-143. Culpable mental state not required.

Neither allegation nor evidence of a culpable mental state is required for the proof of the offense defined by this article under section 16-141(a). (Ord. No. 07-040, § I, 5-8-07)

Sec. 16-144. Affirmative defenses.

It is an affirmative defense to prosecution that any of the following conditions apply:

(a) The person required to register on the database established the permanent or temporary residence, and has complied with all of the sex offender registration laws of the state of Texas, prior to the date of the adoption of this ordinance.

(b) The person required to register on the database was a minor when he or she committed the offense requiring such registration and was not convicted as an adult.

(c) The person required to register on the database is a minor.

(d) The premises where children commonly gather, as specified herein, within 2,000 feet of the permanent or temporary residence of the person required to register on the database was opened after the person established the permanent or temporary residence and the person has complied with all sex offender registration laws of the state of Texas.

(e) The information on the database is incorrect, and, if corrected, this section would not apply to the person who was erroneously listed on the database.

(Ord. No. 07-040, § I, 5-8-07)

Sec. 16-145. Penalty.

Any person, firm or corporation violating a provision of this article shall be guilty of a Class C misdemeanor and, upon conviction of such violation, shall be punished by a penalty of fines as set forth in section 1-8 for each offense. Each day the violation continues is a separate offense.

(Ord. No. 07-040, § I, 5-8-07)

Sec. 16-146. Provisions severable.

It is hereby declared to be the intention of the city council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this code shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this code, since the same would have been enacted by the city council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section. (Ord. No.

07-040, § I, 5-8-07)