

**ORDINANCE NO. 2009-01**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, BY DELETING SECTION 14-8. *MAXIMUM SOUND LEVELS*, OF CHAPTER 14. BUILDINGS AND BUILDING REGULATIONS, BY PROVIDING A NEW SECTION 14-8, BY DELETING ARTICLE V. *NOISE* OF CHAPTER 30-ENVIRONMENT, BY PROVIDING A NEW ARTICLE V OF CHAPTER 30, ALL PROHIBITING AND REGULATING CERTAIN NOISES; ESTABLISHING RULES AND REGULATIONS FOR THE PERMITTING AND OPERATION OF CERTAIN NOISE MAKING ACTIVITIES AND DEVICES; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$500 FOR EACH VIOLATION HEREOF; AND PROVIDING FOR SEVERABILITY; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.**

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**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:**

**Section 1.** The Code of Ordinances of the City of Tomball, Texas, is hereby amended by deleting Section 14-8 Maximum Sound Levels of Chapter 14 Buildings and Building Regulations thereof, and providing a new Section 14-8 of Chapter 14, to provide as follows:

**“Sec. 14-8. Maximum sound levels.**

(a) All industrial or commercial businesses within the city limits shall conform to the maximum sound levels as set out below. Sound levels shall be measured with a sound level meter and an associated octave band analyzer, both manufactured in accordance with the specifications prescribed by the American Standards Association. Noise emission from any commercial or industrial operation shall not cause sound pressure levels greater than those listed in the table below, measured at any point at the commercial or industrial operation's boundary, either at ground level or at a habitable elevation, whichever is more restrictive.

TABLE INSET:

Octave Band Center Frequency (HZ)	Sound Pressure Level (DB)*
31.5	85
63	71
125	61
250	52
500	47
1000	44
2000	39
4000	37
8000	35

\*re: 0.0002 microbar

(b) The sound level produced by any industry shall not exceed the limits established in this section.”

**Section 2.** The Code of Ordinances of the City of Tomball, Texas, is hereby amended by deleting Article V. Noise of Chapter 30 Environment, and providing a new Article V of Chapter 30, to provide as follows:

**“Sec. 30-181. Definitions.**

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

***Daytime hours*** means the hours from 7:00 a.m. on one day and 10:00 p.m. the same day.

***dB(A)*** means the intensity of a sound expressed in decibels.

***Emergency*** means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss that demands immediate action.

***Emergency work*** means any work performed for the purpose of (i) preventing or alleviating the physical trauma or property damage threatened or caused by an emergency; (ii) restoring

property to a safe condition following a fire, accident, or natural disaster; (iii) protecting persons or property from exposure to danger; or (iv) restoring public utilities.

**Nighttime hours** means the hours between 10:01 p.m. on one day and 6:59 a.m. the following day.

**Non-residential property** means any real property that is not included in the definition of residential property as defined in this section. Without limitation, the term includes properties that have been developed other than as residential properties, properties that are undeveloped, and properties that are devoted to public purposes, such as public streets and parks.

**Property line** means, with respect to single occupancy properties, the line along the ground surface and its vertical extension that separates the real property owned, leased, or occupied by one person from that owned, leased, or occupied by another person. With respect to shared occupancy properties the term shall mean the imaginary line that represents the legal limits of occupancy of any person who owns, leases, or otherwise occupies an apartment, condominium, hotel or motel room, office, or any other type of occupancy from that of other occupants.

**Residential property** means any real property developed and used for human habitation that contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, unless such premises are actually occupied and used primarily for purposes other than human habitation.

Sound amplifying equipment means any machine or device for the amplification of the human voice, music or other sound. "Sound amplifying equipment" as used in this article shall not be construed as including standard automobile radios when used and heard only by occupants of the vehicle in which installed or warning devices on authorized emergency vehicles or horns or other warning devices on other vehicles used only for traffic or human safety purposes.

**Sound nuisance** means any sound that either exceeds the maximum permitted sound levels specified in section 30-186 of this Code, or for purposes of sections 30-183, 30-184, and 30-185 of this Code, otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.

Sound truck means any vehicle, whether motor-driven, horse-driven or otherwise powered, having mounted thereon, or attached thereto, any sound amplifying equipment.

### **Sec. 30-182. General prohibition.**

(a) A person commits an offense if the person makes, continues, or causes to be made or continued any loud, unnecessary or unusual noise that annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others. In determining whether a noise is loud, unnecessary or unusual, the following factors shall be considered: time of day; proximity to residential structures; whether the noise is recurrent or constant; the volume and intensity of the noise; whether the noise has been enhanced in volume or range by any type of electronic or

mechanical means; and whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

(b) A person commits an offense if he makes, assists in making, permits, continues, causes to be made or continued, or permits the continuance of any sound that either exceeds the maximum permitted sound levels specified in Section 30-186 of this Code or, for purposes of Section 30-183, 30-184 and 30-185 of this Code, otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.

(c) The acts enumerated in the following sections of this article, among others, are declared to be loud, disturbing and unnecessary noises in violation of this article, but such enumeration shall not be deemed to be exclusive.

**Sec. 30-183. Noisy vehicles generally.**

The use of any motor vehicle so out of repair, so loaded, or so noisy that it creates loud and unreasonable grating, grinding, rattling or any other loud and unreasonable sound is hereby prohibited and declared to be unlawful.

**Sec. 30-184. Amplified sound.**

(a) A person commits an offense if the person makes, assists in making, permits, continues, causes to be made or continued, or permits the continuance of any sound using any sound amplifier that is part of or connected to any speaker system, radio, stereo receiver, compact disc player, cassette tape player, microphone, or any other sound source, when operated: (i) in such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants, or (ii) at any time with louder volume than is necessary for convenient hearing for persons who are in the vehicle or within the property or premises in which such sound amplifier is operated and who are voluntary listeners thereto. The operation of any such sound amplifier in such a manner as to be plainly audible at a distance of fifty (50) feet from a vehicle shall be presumed to be violative of this section. The operation of any such sound amplifier in such a manner that bass sounds are plainly audible at a distance of fifty (50) feet from the property line of a property or premises in which the amplification is located shall be presumed to be violative of this section.

(b) It is an affirmative defense to prosecution under this section that the sound source is a motor vehicle and that (i) the motor vehicle is a mobile sound stage or studio that is being used on a stationary basis at a location not situated upon any street for the purpose of providing sound, during daytime hours, for an event or function and (ii) the use is in compliance with all other provisions of this chapter, including but not limited to section 30-8 of this Code, if applicable.

**Sec. 30-185. Noisy animals and birds.**

(a) A person commits an offense if the person keeps an animal or bird that causes or makes frequent or long and continued sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of ordinary, reasonable persons of normal sensibilities and ordinary tastes, habits, and modes of living who reside in the vicinity thereof.

(b) The keeping of a noisy animal or bird is hereby prohibited and declared to be a sound nuisance in violation of this chapter, regardless of whether the sound so created by the animal or bird is within the permissible levels specified in section 30-186 of this Code.

**Sec. 30-186. Maximum permissible sound levels.**

(a) In addition to the violations established by the preceding sections of this chapter, no person shall conduct, permit, or allow any activity or sound source to produce a sound discernible at any location beyond the property lines of the property on which the sound is being generated that when measured as provided in section 30-187 of this Code exceeds the applicable dB(A) level listed below for the property on which the sound is received:

- (1) *Residential property:*
  - a. 65 dB(A) during daytime hours.
  - b. 58 dB(A) during nighttime hours.
- (2) *Nonresidential property:* 68 dB(A) at all times.

Any sound that exceeds the dB(A) levels set forth in this section under the conditions and measurement criteria set forth in this chapter is a violation of this chapter. Evidence that an activity or sound source produces a sound that exceeds the dB(A) levels specified in this section shall be prima facie evidence of a sound nuisance that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this chapter.

(b) Regardless of the measurable dB(A) level established above and measured as provided in section 30-187, below, the generator of any sound of such a nature as to cause persons occupying or using any property other than the property upon which the sound is being generated to be aware of sympathetic vibrations or resonance caused by the sound shall also be prima facie evidence of a sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this chapter.

**Sec. 30-187. Method of sound measurement.**

Whenever portions of this chapter prohibit sound over a certain decibel limit, measurement shall be made with a Type 1 or Type 2 calibrated sound level meter utilizing the A-weighting scale and the slow meter response as specified by the American National Standards Institute (A.N.S.I. S1.4-1984/85A). Measurements recorded shall be taken so as to provide a proper representation of the sound being measured. The microphone of the meter shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound. A windscreen for the microphone shall be used. Measurements of sound generated shall be taken from the property line of the nonresidential property or residential property where the sound is received to the source of the sound.

**Sec. 30-188. Permit required for use of outdoor sound amplification equipment.**

(a) No person shall use or cause to be used any loudspeaker, loudspeaker system, sound amplifier, or any other machine or device that produces, reproduces, or amplifies sound outside of buildings or other enclosed structures in a manner that exceeds the levels specified in section 30-186, when measured from the property where the sound is being received, without first obtaining a permit to do so. The permit shall be granted only for the amplification of music or human speech, or both. The permit:

- (1) May be obtained by making application to the director of the city department so designated by the city manager.
- (2) Requires payment of a \$10.00 fee for the administrative costs of issuing the permit or a sworn statement of inability to pay the fee.
- (3) Is valid for one 14 hour period between the hours of 8:00 a.m. and 10:00 p.m.
- (4) Shall not be issued to the same or any other person for the same location more than twice during any 30 day period. In the case of a sound truck, location shall relate to the area traversed by the truck in one day.
- (5) Shall not authorize, allow, or otherwise permit the production, reproduction, or amplification of sound that exceeds 75 dB(A) when measured from the property line of the nearest receiving property.

(b) The permit application required to be filed pursuant to this section shall contain the following information:

- (1) The date of the application and the date and hours for which the permit is requested.
- (2) The name and address of the applicant.
- (3) The name and address of the person who will have charge of the sound amplifying equipment.
- (4) The purpose for which the sound equipment will be used.
- (5) The address and a description of the location where the sound equipment will be used.
- (6) A description of the type of sound amplifying equipment to be used.

**Sec. 30-189. Defenses.**

The following defenses shall apply to any offense established in this chapter:

- (a) The emission of any sound was for the purpose of alerting persons to the existence of an emergency, danger, or attempted crime.
- (b) The sound was produced by an authorized emergency vehicle.
- (c) The sound was produced by emergency work.

(d) The sound was generated:

- (1) At a lawfully scheduled stadium event;
- (2) By a parade and spectators and participants on the parade route during a lawful parade;
- (3) By spectators and participants at lawfully scheduled amphitheater event;
- (4) By patrons and participants using cannons and gunfire during historical battle re-enactments for which a pyrotechnic permit was obtained and the explosives were inspected by the fire marshal;
- (5) By a pyrotechnic display that was inspected and approved by the fire marshal; or
- (6) By spectators and participants of an event, fun run, race, festival, fiesta, or concert that was sponsored or cosponsored by the city.

(e) The sound was produced by the erection, excavation, construction, or demolition of any building or structure, including the use of any necessary tools or equipment, conducted between the hours of 7:00 a.m. and 8:00 p.m., which activity did not produce a sound exceeding 85 dB(A) when measured from the property line of the residential property where the sound is being received.

(f) The sound was produced by aircraft in flight or in operation at an airport, or railroad equipment in operation on railroad rights-of-way.

(g) The sound was produced by operating or permitting the operation of any mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, lawnmower, or any other similar device used between the hours of 7:00 a.m. and 8:00 p.m., provided the device did not produce a sound exceeding 85 dB(A) when measured from the property line of the nearest residential property where the sound is being received and was used for the maintenance or upkeep of the property on which it was operated.

(h) The sound was generated as authorized under the terms of a permit issued under section 30-188 of this Code.

(i) The sound was produced by the operation of any air conditioning unit that did not produce a sound exceeding 65 dB(A) on residential property or 75 dB(A) on nonresidential property, when measured at or near 15 feet from the air conditioning unit producing the sound being measured.

(j) The sound was produced by church bells or church chimes when used as part of a religious observance or service during daytime hours, provided the sound did not cumulatively exceed five minutes duration in any one hour period.

(k) The sound was produced during daytime hours by activities conducted on public parks, public playgrounds, and public or private school grounds, including, but not limited to, school athletic and school entertainment events.

**Sec. 30-190. Penalty.**

Any person who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this chapter is guilty of an offense and, upon conviction thereof, shall be punished by a fine of not more than \$500.00. Each hour or portion thereof in which any violation shall occur shall constitute a separate offense.”

**Section 3.** All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

**Section 4.** Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$500. Each hour or portion thereof in which any violation shall occur shall constitute a separate offense.

**Section 5.** It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

**Section 6.** This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City’s Home Rule Charter.



FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 5<sup>TH</sup> DAY OF JANUARY 2009.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN LAZENBY	<u>AYE</u>
COUNCILMAN WEBB	<u>AYE</u>
COUNCILMAN HARVEY	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 19<sup>TH</sup> DAY OF JANUARY 2009.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN LAZENBY	<u>AYE</u>
COUNCILMAN WEBB	<u>AYE</u>
COUNCILMAN HARVEY	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

(signed) Gretchen Fagan  
Gretchen Fagan, Mayor

ATTEST:

(signed) Doris Speer  
Doris Speer, City Secretary