

**An Ordinance of the City of Plano, Texas, repealing Ordinance No. 2017-12-2 codified as Article V, Noise, of Chapter 14, Offenses – Miscellaneous of the City of Plano Code of Ordinances and replacing it with a new Article V, Noise, of Chapter 14, Offenses – Miscellaneous of the City of Plano Code of Ordinances to allow for a permit process applicable to entertainment venues and to otherwise clarify existing language in the Noise Ordinance and providing a repealer clause, a severability clause, a savings clause, a penalty clause, a publication clause, and an effective date.**

**WHEREAS**, on December 11, 2017, the City Council of the City of Plano passed Ordinance No. 2017-12-2, codified as Article V, Noise, of Chapter 14, Offenses – Miscellaneous of the City of Plano Code of Ordinances; and

**WHEREAS**, the public health effect of noise pollution is well researched and documented (Noise Effects Handbook, US EPA, 1981; Noise and Its Effects, Suter, 1991; The Effects of Living in Noisy World, Chepesiuk, 2005); and

**WHEREAS**, staff recommends that government and school sponsored events be exempt from this ordinance because civic and school engagement is highly favored and elected officials may be held accountable by residents if those events do not meet community expectations for noise; and

**WHEREAS**, there is a need to balance business, religious and cultural needs and preferences with the health effects of noise and the desire for peaceful enjoyment of property for residents, workers and business patrons in the City of Plano and this Ordinance balances those needs; and

**WHEREAS**, it is understood that persons have different sensibilities and tolerances regarding noise, and this Ordinance balances those needs allowing for occasional noise by providing exemptions and allowing for permits for entertainment venues to serve community desires; and

**WHEREAS**, staff recommends repealing the current Noise Ordinance and replacing it with new ordinance to include a permit process related to entertainment venues and certain clarifications of existing language; and

**WHEREAS**, after consideration of the recommendations of staff and all matters attendant and related thereto, the City Council is of the opinion that it is in the best interest of the City and its citizens to repeal Ordinance No. 2017-12-2 codified as Article V, Noise, of Chapter 14, Offenses – Miscellaneous of the City of Plano Code of Ordinances and replace it with a new Article V, Noise, of Chapter 14, Offenses – Miscellaneous of the City of Plano Code of Ordinances.

**NOW THEREFORE, BE ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** Ordinance No. 2017-12-2 codified as Article V, Noise, of Chapter 14, Offenses – Miscellaneous of the City of Plano Code of Ordinances is hereby repealed and replaced with a new Article V, Noise, of Chapter 14, Offenses – Miscellaneous of the City of Plano Code of Ordinances to read as follows:

## **“ARTICLE V. – NOISE**

### **DIVISION 1. - GENERALLY**

#### **Sec. 14-85. - Definitions.**

Unless otherwise expressly stated, the following words, terms, and phrases shall have the following meanings when used in this article:

**Background noise** shall mean the all-encompassing sound associated with a given environment without contributions from a specific noise source.

**Commercial/Mixed-use** shall mean, for the purposes of this article, all non-residential and mixed-use zoning districts as outlined in the city’s zoning ordinance, as amended, except for Light Industrial – 1 and Light Industrial – 2 districts.

**Construction** shall mean any phase of the on-site erection or removal, including, but not limited to, excavation, demolition, alteration, repair, or maintenance, of any building or structure, or associated landscaping or paving activities conducted on that site.

**Day or daytime** shall mean from 7:00 AM to 10:00 PM.

**Department** shall mean the City of Plano department(s) designated by the City Manager to enforce the requirements of this article.

**Entertainment Venue** shall mean an indoor or outdoor location where persons take part in entertainment, including, but not limited to, a concert hall, amphitheater, dance hall, auditorium, convention center, movie theater, bar, restaurant, or facility for performance of a play, film exhibition, poetry reading, live music, recorded music, or dance.

**Impulsive noise** shall mean any specific noise that contains successions of pulses or transients and if the sound level changes at a rate greater than 10 dB per second.

**Industrial** shall mean, for the purposes of this article, Light Industrial – 1 and Light Industrial – 2 districts as outlined in the city’s zoning ordinance.

**Landscaping and lawn care** shall mean activities to establish, promote, control, and/or maintain a lawn or landscape for ornamentation or nonagricultural purpose, including, but not limited to, blowing planting seeding, sodding, removing, mowing, cutting, trimming, pruning, mulching, aerating, applying chemicals, or fertilizing trees, shrubs, flowers, grass, ground cover, leaves, and other flora.

**Night or nighttime** shall mean from 10:01 PM to 6:59 AM.

**Noise level** shall mean the A-weighted sound pressure level in decibels (dBA).

**Noise nuisance** shall mean any specific noise that is likely to cause unreasonable discomfort or distress to a reasonable person or to unreasonably interfere with the use or enjoyment of property.

**Owner** shall mean any Person with ownership, care, custody, or control over property.

**Person** shall mean any individual, corporation, association, firm, partnership or other entity with ownership, care, custody, or control over property.

**Residential** shall mean, for the purposes of this article, residential zoning districts as outlined in the city's zoning ordinance except for mixed-use districts.

**Specific noise** shall mean any noise that is clearly distinguishable from the background noise, whether audibly or with a measuring device or instrument.

**Sound impact plan** means a plan required in connection with application for an entertainment venue permit.

**Sport shooting range** shall have the meaning in Sec. 250.001, Local Government Code.

#### **Sec. 14-86. – Offenses.**

- (a) It shall be an offense for any person to intentionally, knowingly, or recklessly make or cause to be made an unreasonable noise
  - (1) in a public place, other than a sport shooting range, or
  - (2) on private property that the person has no right to occupy.
- (b) It shall be an offense for a person to intentionally, knowingly, or recklessly make, cause to be made, or allow a noise nuisance on property owned by him or subject to his care, custody or control.
- (c) The issuance of a certificate of occupancy, land occupancy permit, multiple pet permit, or other permit issued by City of Plano shall not be a defense to prosecution under this Article, unless otherwise expressly provided in this Article.

#### **Sec. 14-87. – Presumptions.**

- (a) A noise is presumed to be unreasonable and declared to be a noise nuisance if it meets any of the following criteria:
  - (1) The noise directly or indirectly results in a specific noise level exceeding the maximum applicable noise level in the following table:

<b>Table 1: Maximum Specific Noise Levels</b>		
<b>Noise-receiving district</b>	<b>Timeframe</b>	
	<b>Day</b>	<b>Night</b>
	<b>7:00 AM to 10:00 PM</b>	<b>10:01 PM to 6:59 AM</b>
<b>Residential</b>	65 dB or 10 dB above the background noise level, whichever is lower	55 dB or 5 dB above the background noise level, whichever is lower

<b>Commercial/Mixed Use</b>	70 dB or 10 dB above the background noise level, whichever is lower	60 dB or 5 dB above the background noise level, whichever is lower
<b>Industrial</b>	75 dB or 10 dB above the background noise level, whichever is lower	65 dB or 5 dB above the background noise level, whichever is lower
<ul style="list-style-type: none"> <li>• If the background noise level exceeds the maximum permitted noise level indicated above, the background noise level shall be the maximum noise level.</li> <li>• 5 dB shall be subtracted from the maximum Noise Level where the Noise Level includes impulsive noise.</li> <li>• The most restrictive maximum Noise Level shall apply at the property where the noise is audible.</li> <li>• Noise may be measured where the noise is audible or where the alleged nuisance is received. Measurement location may be adjusted where line-of-site or elevation may pose a challenge in determining whether a nuisance exists.</li> </ul>		

- (2) *Amplification of sound for commercial advertising.* The noise is from the production or amplified reproduction of sound that is broadcast into a public place or upon a public street or highway for the purpose of commercial advertising or attracting the attention of the public to a building, structure, person, or event.
- (3) *General amplification of sound.* The noise is from the production or amplified reproduction of the human voice, and the sound is plainly audible on private property or for fifty (50) feet or more onto public property.
- (4) *Schools, courts, religious facilities, and hospitals.* The noise is:
  - a. created in a public place or on a public street or highway adjacent to a school, institution of learning, religious facility, a court while in use, or adjacent to a hospital, and
  - b. reasonably likely to interfere with the workings of such institution or disturb or annoy a patient in the hospital, and
  - c. a sign indicating that a school, institution of learning, religious facility, court, or hospital is in the vicinity is posted so as to be visible to motorists, passengers, and pedestrians.
- (5) The noise is created by the operation of a motor vehicle that is not equipped with a muffler in good working condition that continuously operates to prevent excessive or unusual noise.

- (6) *Animals.* The noise is from an animal that
- a. Is frequent or habitual in creating the noise so that it is disturbing to a reasonable person, whether the animal is contained at any public or private facility, a residence, or in a public place, and
  - b. Is under the care, custody or control of a Person.
- (b) An act is deemed to occur in a public place or on private property if it produces the prohibited noise or vibration in the public place or on private property, respectively.

**Sec. 14-88. – Vibration.**

It shall be an offense for any person to intentionally, knowingly, or recklessly make, cause to be made, or allow any unreasonable vibration. A vibration is presumed to be unreasonable if it is perceptible without use of an instrument on any affected property.

**Sec. 14-89. – Defenses.**

- (a) It shall be an affirmative defense to prosecution under this article that:
- (1) The noise is immediately and reasonably necessary to prevent imminent threat of bodily injury, death, or loss of property.
  - (2) The noise is a reasonable result from a lawfully scheduled event in full compliance with all permits issued by the City and all other local, state, and federal laws, including, but not limited to:
    - a. A stadium or sporting event that takes place on public property;
    - b. School-sponsored event;
    - c. A parade;
    - d. An event using a real or simulated cannon, firearm, gunfire, explosive, or pyrotechnic item;
    - e. An event, fun run, race, festival, fiesta, or concert that was sponsored or co-sponsored by the City; or
    - f. A special event as defined in the City of Plano Code of Ordinances.
  - (3) The noise is produced by reasonably necessary construction or landscaping and lawn care-related activities on real or personal property, conducted at any point from 7:00 a.m. through 10:00 p.m., and the activity is in compliance with all other State and Federal laws and the City of Plano Code of Ordinances, and the noise does not directly or indirectly result in a specific noise level exceeding 85 dBA.
  - (4) The noise is produced by the operation of any heating, refrigeration, ventilation, air conditioning equipment or system, generator, or pool equipment, and the noise does

not directly or indirectly result in a specific noise level exceeding 65 dBA on residential property or 75 dBA on commercial/mixed-use or industrial property.

- (5) The noise is produced as part of a religious observance or service, provided the sound does not cumulatively exceed five minutes' duration in any one-hour period.
- (6) The noise is produced by reasonable activities conducted in public parks, public playgrounds, or public or private school grounds, at any point from 7:00 a.m. through 10:00 p.m.
- (7) The noise is produced by the lawful operation of a motor vehicle under the Texas Transportation Code.
- (8) The noise is produced by the transportation, placement, filling, collection, or removal of a waste or recycling receptacle or container at any point from 7:00 a.m. through 10:00 p.m. in an area zoned for residential use or within three hundred (300) feet outside of an area zoned for residential use.
- (9) The noise is produced by construction-related activity outside of the designated hours set forth in this article, and said activity has received written approval from the City, has been approved by a State or Federal authority, or is reasonably necessary due to an emergency.
- (10) The noise is produced by a property that has received a variance from the noise standards in the Zoning Ordinance from the Board of Adjustment during the development process and complies with all variance requirements and other local, state, and federal laws.
- (11) The noise is produced in compliance with a valid, City-issued Entertainment Venue Permit and in compliance with all other local, state, and federal laws.

#### **Sec. 14-90. – Applicability.**

This article shall not apply to noise created by emergency vehicles or equipment of the State, a political subdivision of the State, or a Federal agency.

### **DIVISION 2. – ENTERTAINMENT VENUE PERMITS**

#### **Sec. 14-91. – General.**

- (a) A permit is required under this subpart in order to exceed specific noise levels found in 14-87(a)(1) at entertainment venues and for application of a defense to prosecution pursuant to Sec. 14-89(a)(11).
- (b) No entertainment venue permit will be granted for use within residential districts as defined by this article or within 100 feet of property zoned as a residential district as defined by this article at the time of permit approval.

- (c) The department may issue a 3-year permit authorizing the exceedance of specific noise levels, subject to the requirements of this subpart.
- (d) The City Council shall have the power and the duty to review and approve, approve with conditions or deny applications for entertainment venue permits.

**Sec. 14-92. – Decibel Limits for Entertainment Venues.**

- (a) Unless a more restrictive decibel limit is required by a condition in an entertainment venue permit, or by another provision of this article, venues for which a permit has been issued may operate at the following decibel levels:
  - (1) In a commercial/mixed-use or industrial district, as defined by this ordinance, daytime thresholds as prescribed in Section 14-87 between 10:00 p.m. and 11:59 p.m. on Friday, Saturday, and the night before New Year's Day.
- (b) A permit holder shall maintain records of noise measurement for each event for a minimum of three years after the event and must allow inspection of the records by the department upon request.

**Sec. 14-93. – Permit Application.**

- (a) A person seeking an entertainment venue permit or seeking to renew an entertainment venue permit must complete and submit to the department a complete permit application on a form provided by the department and the associated application fee.
  - (1) A permit must include the following for the applicant and all persons designated by the applicant as authorized representatives:
    - a. Legal name;
    - b. Phone number, address, and email address; and
    - c. Copy of government-issued identification with photo.
  - (2) A permit that has been approved shall be valid for a term of three years.
  - (3) The department shall extend the permit term to five years for persons who have not been issued a notice of violation relating to the conditions of the permit or requirements of this article during the permit term and have been in compliance for the duration of the permit with all other local, state, and federal laws related to noise.
- (b) A permit may not be transferred from one person to another person or from one entertainment venue to another.
- (c) Permit fees are non-refundable.
- (d) The department shall review and process fully completed permit applications for consideration by the Planning & Zoning Commission and City Council.

**Sec. 14-94. – Sound Impact Plan.**

- (a) A sound impact plan must be submitted to the department with the application for an entertainment venue permit.
  - (1) The sound impact plan must include the results of a sound study, including:
    - a. Noise impact to surrounding properties, as measured from the receiving property;
    - b. Prescribed decibel levels and hours of operation;
    - c. Sound-mitigating design features;
    - d. Availability and use of decibel meters on site; and
    - e. Contact information and hours of availability for an individual responsible for sound.
  - (2) Any other elements reasonably required by the department related to mitigation of noise impacts and provided to the applicant before the sound impact plan is prepared.
  - (3) A sound impact plan must be prepared by a professional acoustical consultant or acoustical engineer.
- (b) After a permit has been issued, the department may require modification of a sound impact plan if exceedances of decibel thresholds are documented and mitigation measures are needed as documented by a Notice of Violation.

**Sec. 14-95. – Notice of Application.**

- (a) Not later than the 14<sup>th</sup> day before the Planning and Zoning Commission meeting under Section 14-96, the department shall provide notice of application under this section. At the applicant's expense, notices shall be mailed to:
  - (1) The applicant, and
  - (2) Property owners within 500 feet and all known homeowner's associations within 1500 feet of the entertainment venue property boundaries included in the application.
- (b) Notice required under this section must:
  - (1) Describe the general nature of the application;
  - (2) Identify the applicant and the location of the site or property included in the application;
  - (3) Describe:
    - a. The venue and events anticipated; and



- b. The size of the venue and its capacity.
- (4) Provide contact information for the department; and
- (5) Describe how a person may submit comments on the application.

**Sec. 14-96. – Decision on Application and Renewal.**

- (a) The department, following review of a fully completed permit application, sound impact plan, and notification process, will provide a recommendation for approval, approval with conditions, or denial.
- (b) The Planning and Zoning Commission shall review the application and give recommendation for approval, approval with conditions, or denial.
- (c) A public hearing on an application decision shall be held at the earliest City Council meeting following Planning and Zoning Commission review, and for which notice of the hearing can be timely provided.
- (d) The City Council shall approve, approve with conditions or deny issuance of a permit for an entertainment venue. Application for permit renewal shall follow the process outlined in this section, except that a new sound impact plan may not be required by the department if the venue has not violated permit conditions or any other laws related to noise during the permit term.
- (e) In reviewing the application, the decision-making bodies shall consider:
  - (1) Whether the permit will unreasonably interfere with the right of neighbors to peaceable enjoyment of their property;
  - (2) Whether the permitted activity is suitable for the area where it will be located;
  - (3) If the mitigation measures appropriately consider the effect of the permit on surrounding properties; and
  - (4) Any other considerations related to health, safety and welfare.

**Sec. 14-97. – Revocation of a Permit.**

- (a) The department may revoke a permit if the permit holder or authorized representative has committed two or more noise-related violations or violated conditions of the permit within the previous 24 months at the property where the permit would apply.
- (b) The department shall provide notice of revocation. Notice shall be hand-delivered or delivered by certified and regular mail to the permit holder.
- (c) A permit holder may appeal a revocation by delivering a notice of appeal to the city's address, designated on the notice of revocation.

- (d) A notice of appeal is effective only if compliant with this Article and delivered to the department not later than 10 business days after the date on the notice of revocation.
- (e) A notice of appeal must be on a form prescribed by the department.
- (f) The City Council shall hear the appeal at the next available scheduled meeting following seven days after the receipt of the notice of appeal, unless an extension is agreed to in writing by the permit holder and the department.
- (g) A revocation order is suspended during the pendency of an appeal under this section.
- (h) No permit will be issued to a person who owned, or who has had or had an ownership interest in, an entity that had its entertainment venue permit revoked under this chapter in the preceding twelve months.

### **DIVISION 3. - ENFORCEMENT**

#### **Sec. 14-98. - Enforcement.**

The City Manager or their designee shall have authority to enforce this article.

#### **Sec. 14-99. - Penalties.**

- (a) It shall be an offense to fail to comply with any provision of this article, and, upon conviction thereof, a person shall be punished by a fine in an amount not to exceed Five Hundred Dollars (\$500.00). Each day a violation occurs shall constitute a separate offense.
- (b) Repeat and Habitual Offenders.
  - (1) If it is shown on the trial of an offense under this article that the defendant has previously been finally convicted of an offense under this article, on conviction the person shall be punished by a fine of not less than \$300.00 and not to exceed \$500.00.
  - (2) If it is shown on the trial of an offense under this article that the defendant has previously been finally convicted of two offenses under this article, on conviction the person shall be punished by a fine of not less than \$400 and not to exceed \$500.
  - (3) This subsection applies only to a person finally convicted of a second or subsequent offense within three years of the date on which the most recent preceding offense was committed.
- (c) In addition to the penalties prescribed above, the City may pursue other remedies such as abatement of nuisances, injunctive relief, administrative adjudication and revocation of licenses or permits."

**Section II.** All provisions of the Code of Ordinances of the City of Plano, codified or uncodified, in conflict with the provision of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Plano, codified or uncodified, not in conflict with this Ordinance shall remain in full force and effect.

**Section III.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

**Section IV.** The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this ordinance.

**Section V.** This Ordinance shall have a delayed effective date of March 7, 2022. This ordinance shall be published upon passage as required by law.

**DULY PASSED AND APPROVED** this the 13<sup>th</sup> day of December 2021.

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John B. Muns, MAYOR

ATTEST:

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Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

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Paige Mims, CITY ATTORNEY