An Ordinance of the City of Plano, Texas, repealing Ordinance No. 99-12-12 codified as Article V, Noise, of Chapter 14, Offenses – Miscellaneous of the City of Plano Code of Ordinances and adopting a new Article V, Noise, of Chapter 14, Offenses – Miscellaneous of the City of Plano Code of Ordinances; and providing a repealer clause, a severability clause, a savings clause, a penalty clause, and an effective date.

WHEREAS, on December 13, 1999, the City Council passed Ordinance No. 99-12-12, codified as Article V, Noise, of Chapter 14, Offenses – Miscellaneous of the City of Plano Code of Ordinances; and

WHEREAS, staff recommends adopting a new ordinance to be codified as Article V, Noise, of Chapter 14, Offenses – Miscellaneous of the City of Plano Code of Ordinances to combine all noise regulations and create a comprehensive noise ordinance; 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 that the new noise ordinance be adopted and codified as 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. 99-12-12 codified as Article V, Noise, of Chapter 14, Offenses – Miscellaneous of the City of Plano Code of Ordinances is repealed in its entirety.

Section II. A new Article V, Noise, of Chapter 14, Offenses – Miscellaneous of the City of Plano Code of Ordinances is hereby adopted to read as follows:

"**ARTICLE V. – NOISE**

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 shall mean, for the purposes of this article, all non-residential zoning districts as outlined in the city's current zoning ordinance 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.

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

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.

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

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, corporation, association, firm, partnership or other entity 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.

Noise Level shall mean the A-weighted sound pressure level in decibels (dBA) including both background and specific noise.

Specific noise shall mean any noise that is clearly distinguishable from the background noise.

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

Sec. 14-86. – Offenses.

(1) It shall be an offense for any person to intentionally, knowingly, or recklessly make or cause to be made an unreasonable noise

   (a) in a public place, other than a sport shooting range, or

   (b) on private property that the person has no right to occupy.

(2) It shall be an offense for an owner of property 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.

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(3) The issuance of a certificate of occupancy, land occupancy permit, multiple pet permit, or permit issued by City of Plano shall not be a defense to prosecution under this Article.

Sec. 14-87. – Presumptions.

(1) A noise is presumed to be unreasonable and declared to be a noise nuisance if it meets any of the following criteria:

(a) The noise directly or indirectly results in a Noise Level exceeding the maximum applicable Noise Level in the following table:

Table 1: Maximum Noise Levels		
Noise-receiving district, property type, or use	**Timeframe**	
	Day	**Night**
	7:00 AM to 10:00 PM	**10:01 PM to 6:59 AM**
Residential	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
Commercial/Mixed Use	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
Industrial	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
• If background noise level is higher than the indicated maximum Noise Level, the maximum Noise Level shall be equal to the background noise level. • 5 dB shall be subtracted from the maximum Noise Level where the Noise Level includes impulsive noise. • The most restrictive maximum Noise Level shall apply at the property where the noise is audible.		

(b) 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.

(c) General amplification of sound.

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The noise is from the production or amplified reproduction of the human voice, and the sound is audible on adjacent private property or for fifty (50) feet or more onto public property.

(d) Schools, courts, religious facilities, and hospitals.

The noise is

(i) 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

(ii) is reasonably likely to interfere with the workings of such institution or disturb or annoy a patient in the hospital, and

(iii) 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.

(e) 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.

(f) Animals.

The noise is from an animal that

(i) is frequent or habitual 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

(ii) is under the care, custody or control of a person, corporation, association, firm, partnership, or other entity.

(2) 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.

Sec. 14-88. – Vibration.

It shall be an offense for any person or owner to intentionally, knowingly, or recklessly make, cause to be made, or allow any unreasonable ground or structure-borne vibration.

Sec. 14-89. – Defenses.

It shall be an affirmative defense to prosecution under this article that:

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(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;

(b) School-sponsored event;

(c) A parade;

(d) An amphitheater event;

(e) A musical performance;

(f) An event using a real or simulated cannon, firearm, gunfire, explosive, or pyrotechnic item;

(g) An event, fun run, race, festival, fiesta, or concert that was sponsored or co-sponsored by the City; or

(h) A special event as defined in the City of Plano Code of Ordinances.

(3) The noise is produced by reasonably necessary construction-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 noise Level exceeding 85 dBA.

(4) The noise is produced by the operation of any heating, refrigeration, ventilation, air conditioning equipment or system, or pool equipment, and the noise does not directly or indirectly result in a Noise Level exceeding 65 dBA on residential property or 75 dBA on commercial 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.

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(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 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 City's Board of Adjustment allowing the noise that would otherwise be prohibited.

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.

Sec. 14-91. - Compliance with other provisions.

A person may request a noise variance by following the process set forth in the zoning ordinance of the City.

Sec. 14-92. - Enforcement.

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

Sec. 14-93. - Penalties.

(1) 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 Two Thousand Dollars ($2,000.00). Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense.

(2) Repeat and Habitual Offenders.

(a) 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 $500.00 and not to exceed $2,000.00.

(b) 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

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the person shall be punished by a fine of not less than $1,000.00 and not to exceed $2,000.00.

(c) 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.

(3) 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 III. 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 IV. 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 V. 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 VI. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with Section 1-4(a) of the City of Plano Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VII. This Ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED this the 11th day of December 2017.

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Harry LaRosiliere, MAYOR

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ATTEST:

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Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

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Paige Mims, CITY ATTORNEY

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