

ORDINANCE NO. 13-01

AN ORDINANCE OF THE CITY OF SOUTH PADRE ISLAND, TEXAS, AMENDING SEC 12-2(B)(a)(11), SEC 12-2(B)(a)(12) AND 12-2(B)(b) OF CHAPTER 12 OF THE CODE OF ORDINANCES OF THE CITY OF SOUTH PADRE ISLAND PERTAINING TO NOISE NUISANCE ENUMERATION FOR THE NEW ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES. PROVIDING FOR A PENALTY OF FIVE HUNDRED DOLLARS (\$500.00) FOR ANY VIOLATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PUBLICATION IN CAPTION FORM.

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

**Section 1.** Sec. 12-2(B)(a)(11), 12-2(B)(a)(12) and 12-2(B)(b) of Chapter 12 of the Code of Ordinances of the City of South Padre Island is amended to read as follows:

**Sec.12-2 Noises--Loud, disturbing, etc. prohibited.**

**(A) Definitions and Standards.** [As used in this Sec. 12-2, the following words and terms shall have the meanings respectively ascribed:]

*A-weighted sound level* means the sound pressure level in decibels are measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

*Daytime/evening* shall mean the hours between seven o'clock a.m. and eleven o'clock p.m., Sunday through Thursday and seven o'clock a.m. and midnight Friday and Saturday.

*Impulsive sound* means sound of short duration, usually less than one 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 eleven o'clock p.m. and seven o'clock a.m., Sunday through Thursday and midnight. and seven o'clock a.m. Friday and Saturday.

*Noise nuisance* means any loud, irritating, vexing or disturbing sound originating from a nearby property under separate ownership which causes injury, discomfort, or distress of a person of reasonable nervous sensibilities, or any sound that exceeds the maximum permitted sound levels specified in subsections B(a)(8)-(12).

*Sound level* means the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network such as A, B or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4-1971). If the frequency weighting employed is not indicated, the A-weighting shall apply.

**(B) Noise Nuisance Enumeration.**

(a) The following acts, among others not hereinafter enumerated, are declared to be “noise nuisances,” and are unlawful and in violation of the provisions of this division when such acts are done or accomplished or carried on in such a manner, or with such volume, intensity, or with continued duration, so as to annoy, to distress, or to disturb the quiet, City of South Padre Island Code of Ordinances comfort, or repose of a person of reasonable 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:

(1) The playing or permitting or causing the playing of any radio, television, phonograph, drum, juke box, nickelodeon, musical instrument, sound amplifier or similar device which produces, reproduces, or amplifies sound.

(2) Any loud or vociferous language or any soliciting for, or description of, any amusement house, moving picture theater, or other like place of amusement, or for the performance therein, in the entrance thereto, the foyer or lobby thereof, or on the sidewalks adjoining the same.

(3) The continued or frequent sounding of any horn or other signal device on any automobile or vehicle, motorcycle, bus or other vehicle, except as a danger signal.

(4) The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, automobile, motorcycle, or other motor vehicle or boat, except through a muffler or other device which prevents loud or explosive noises therefrom.

(5) The erection, including construction, excavation, demolition, alteration, or repair work, or the permitting or causing the operation of any tools or equipment used in construction, excavation, drilling, demolition, alteration or repair work:

a. Other than during the daytime; or

b. At anytime such that the sound level at or across a real property boundary exceeds 80dBA.

c. This section shall not apply in cases of urgent necessity in the interest of public safety, or in cases of public convenience, including city sponsored or co-sponsored fiestas, parades, and public events.

(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.

(7) The raucous shouting, whistling, yelling, singing, hooting, or crying of peddlers, hawkers, vendors or any other persons.

(8) The making of noise which exceeds seventy-five (75) decibels on District zoned “A” property as defined by Chapter 20, Code of Ordinances (Zoning), when measured from property under separate ownership.

(9) The making of noise which exceeds seventy-five (75) decibels on District “E” property as defined by Chapter 20, Code of Ordinances (Zoning), when measured from property under separate ownership.

(10) The making of noise which exceeds seventy-eight (78) decibels on District zoned “B”, “B-2” and “NT”, properties as defined by Chapter 20, Code of Ordinances (Zoning), when measured from property under separate ownership.

(11) The making of noise which exceeds eighty (80) decibels on District zoned “C”, “NC”, “TCC”, “PBS” and “PBC” property as City of South Padre Island Code of Ordinances defined by Chapter 20 Code of Ordinances, when measured from property under separate ownership. (PBN REMOVED FROM THIS SUBSECTION)

(12) The making of noise which exceeds eighty-five (85) decibels emanating from property in Districts “BF”, “EDC”, C-2, PDD, PBN, D, D-1 and D-2 as defined by Chapter 20 Code of Ordinances (Zoning), when measured from property under separate ownership. Any adjacent property owned, leased, controlled or managed by any person or entity or any affiliate that directly or indirectly controls, is controlled by, or shares common control with the other entity that has an ownership interest or lease interest in the monitored property shall not be considered property under separate ownership for purposes of determining the boundaries of the noise source property from in those districts.

(b) Subtract seven (7) decibels for noise at nighttime except in Districts “BF”, “EDC”, PBN, PDD, D, D-1 and D-2 as defined by Chapter 20 Code of Ordinances (Zoning).

**(C) Vibration.**

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

**(D) Vehicular mounted sound amplification systems.**

It shall be unlawful for any person operating or controlling a motor vehicle in either a public or private place within the City to operate any sound amplifier which is part of, or connected to, any radio, stereo receiver, compact disc player, cassette player, or other similar device in the motor vehicle, in such a manner that, when operated, is audible at a distance of thirty (30) or more feet from the source or, when operated causes a person to be aware of the vibration accompanying the sound in any location outside the confines of the vehicle emitting the sound, noise, or vibration. A culpable mental state is not necessary to constitute a violation of this section.

**(E) Exceptions.**

The provisions of this Sec. 12-2 shall not apply to:

- (1) The emission of sound for the purpose of alerting persons to an emergency; or
- (2) Sound produced by emergency vehicles; or

- (3) Sound produced by a vehicle motor while the vehicle is moving on a public right-of-way or public waterway; or
  - (4) Sound produced by any governmental body in the performance of a governmental function; or
  - (5) Sound generated by parade spectators and participant on the parade route during a permitted parade; by outdoor celebration participants sponsored or cosponsored by the City for the general welfare of the public; by pyrotechnic displays that are inspected and approved by the City Fire Chief.
  - (6) Sound produced by the operation of any air-conditioning unit, heat pump, or swimming pool machinery which does not produce a sound exceeding sixtyfive (65) dBA on residential property or seventy (70) dBA on non-residential property, when measured at a distance of either fifteen (15) feet from the equipment producing the sound, or to the nearest exterior wall of a residential or commercial building under separate ownership, whichever distance is shorter.
- City of South Padre Island Code of Ordinances 2/3/12 112
- (7) Sound produced solely for the purpose of encouraging citizen participation in elections.

**(F) Method of Noise Measurement.**

- (1) Whenever portions of this Chapter prohibit noise over a certain decibel limit, measurement of said noise shall be made with a decibel meter meeting the standards prescribed by the American National Standards Institute. The instruments shall be maintained in calibration and good working order. Calibration corrections shall be employed in meeting the response specifications prior to every sampling of noise. Measurements recorded shall be taken so as to provide a proper representation of the noise being measured. The microphone shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used. Traffic, aircraft and other transportation noise sources and other background noises shall not be considered in taking measurements except where such background noise interferes with the primary noise being measured. Except as provided in Subsection (B)(a)(11), measurements may be taken at a point on adjacent public or private property or on either side of an adjacent public right-of-way at or near the boundary line of the property where the noise is generated.
- (2) The decibel standard for the noise source shall be the standard for the zoning district of the property from which the noise source is emitted.

**(G) 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.

**(H) Penalties.**

Any person who violates any portion of this Sec. 12-2 is guilty of a misdemeanor and shall upon conviction be subject to a fine, as provided by Section 21-1 of the Code of Ordinances. [Ord. 06-04. May 2006]

**Section 2:** This ordinance repeals all portions of any prior ordinances or parts of ordinances of the Code of Ordinances in conflict herewith.

**Section 3.** Any violation of the above amended sections of Chapter 2 of the Code of Ordinances of the City of South Padre Island or failure to pay the same may be punished by a fine not to exceed Five Hundred Dollars (\$500.00) for each offense or for each day such offense shall continue and the penalty provisions of Section 21-1 of the Code of Ordinances is hereby adopted and incorporated for all purposes.

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


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

PASSED, APPROVED AND ADOPTED on First Reading, the 9th day of January, 2013.

PASSED, APPROVED AND ADOPTED on Second Reading, the 23rd day of January, 2013.

ATTEST:

CITY OF SOUTH PADRE ISLAND, TEXAS

  
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SUSAN HILL, CITY SECRETARY

  
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ROBERT N. PINKERTON, JR., MAYOR

