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ORDINANCE _____

AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.40 (NOISE) TO UPDATE THE ORDINANCE AND REMOVE PERMIT-RELATED LANGUAGE THROUGHOUT THE ORDINANCE SO THAT ONLY NUISANCE LANGUAGE REMAINS; BY DELETING PERMIT RELATED LANGUAGE FROM 9.40.010 (DEFINITIONS); TO REPLACE SECTION 9.40.020 (DECIBEL MEASUREMENT CRITERIA) WITH (APPLICABILITY); TO REPLACE SECTION 9.40.030 (DESIGNATED NOISE ZONES) WITH (SOUND LEVEL VIOLATIONS); TO REPLACE SECTION 9.40.040 (EXTERIOR NOISE STANDARDS) WITH (VIBRATION); TO REPLACE SECTION 9.40.050 (INTERIOR NOISE STANDARDS) WITH (SOUND LEVEL MEASUREMENT); TO REPLACE SECTION 9.40.060 (ADDITIONAL NOISE STANDARDS) WITH (IDENTIFICATION OF VIOLATOR); TO REPLACE SECTION 9.40.070 (NOISE SENSITIVE ZONES) WITH (PENALTIES); TO REPLACE SECTION 9.40.080 (NOISE LEVEL MEASUREMENT) WITH (ENFORCEMENT); TO DELETE SECTIONS 9.40.090-9.40.140; THE PENALTY BEING AS PROVIDED IN SECTION 9.40.070 OF THE EL PASO CITY CODE.

WHEREAS, City Code Chapter 9.40 contains various sections regarding noise-related topics;

WHEREAS, City Council now wishes to move all of the language regarding permits for noise-related topics over to Title 5 of the City Code, so that only nuisance language remains in Chapter 9.40.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.010 (Definitions) be amended as follows:

9.40.010 Definitions

The following words shall have the following meanings:

1. "Amplified Sound" means sound including but not limited to music, singing or spoken words that are conveyed through the utilization of sound amplification equipment.
2. "A-weighted sound system" means standards related to the measurement of sound pressure that accounts for the relative loudness perceived by the human ear.

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3. "dB(A)" means a unit of the measurement of sound in decibels, as measured on a sound level meter using the A-weighted system.
4. "Decibel (dB)" means a unit of measurement for sound pressure level at a specified location.
5. "Motor vehicle" means any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semitrailers, campers, watercraft, go-carts, dune buggies or racing vehicles, but not including motorcycles.
6. "Motorcycles" means an unenclosed motor vehicle having a saddle for the use of the operator and two or three wheels in contact with the ground, including, but not limited to, motor scooters and minibikes.
7. "Muffler" means a device for abating the sound of escaping gases of an internal combustion engine.
8. "Noise nuisance" means any loud, irritating, vexing or disturbing sound originating from a nearby property under separate ownership or occupancy which causes injury, discomfort, or distress of a person of reasonable sensibilities, or any sound that exceeds the maximum permitted sound levels specified in this chapter.
9. "Nonresidential 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.
10. "Park" means any public park within the limits of the City of El Paso, including parks owned by the City of El Paso, County of El Paso, or State of Texas.
11. "Permit official" has the same meaning as defined in Section 1.04.030.I of the El Paso City Code.
12. "Person" means an individual, firm, association, partnership, joint venture, corporation or any entity, public or private in nature.
13. "Public right-of-way" means any street, alley, sidewalk or other place to which the public has legal access.
14. "Reasonable sensibilities" means the ordinary, typical and/or expected sensory perception of noise when taking into account the source, volume, time of day and duration of the noise.
15. "Residential property" means a parcel of real property which is developed and used in part or in whole for human habitation, other than transient uses such as hotels, motels, and hospitals.
16. "Sound Amplification Equipment" means a loud speaker, public address system, amplification system for voice and musical

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instruments, or other sound producing device that relies on electrical power to generate and/or amplify sound.

17. "Sound level" means the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network as specified in American National Standards Institute specifications for sound level meters. If the frequency weighting employed is not indicated, the A-weighting shall apply.
18. "Sound level meter" means an instrument which is used to measure sound pressure levels, issued by the City and meeting the standards prescribed by the American National Standards Institute.
19. "Stadium Event" means an event occurring at an outdoor stadium that is not related to a public or private school activity, including but not limited to concerts, professional sports competitions, and entertainment events.

Section 2. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.020 (Decibel Measurement Criteria), be amended in its entirety as follows:

9.40.020 Applicability.

A. This chapter shall not apply to the following:

1. The emission of sound for the purpose of alerting persons to an emergency;
2. Sound produced by emergency vehicles or utility vehicles and utility crews undertaking emergency work; or
3. Sound produced by a vehicle motor with a properly installed muffler while the vehicle is moving on a public right-of-way, public waterway, airport runway, or railway; or
4. Sound produced by any governmental body in the performance of a governmental function, nor to sound from activities from a government-sponsored event on governmentally owned or leased property or property under the control of a public utility;
5. Sound generated at a scheduled Stadium Event;
6. Sound generated by any activity in which the regulation thereof has been preempted by state or federal law, including, but not limited to, sound produced by aircraft in flight and including all activities taking place at the El Paso International Airport; or
7. Sound generated by the normal maintenance of property, such as lawn mowing, provided the activities take place from 7:00 a.m. to 10:00 p.m.; or
8. Sound produced by the operation of any air-conditioning unit, heat pump, HVAC system, or swimming pool machinery which does not produce a sound exceeding seventy (70) dBA on residential

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- property or seventy (75) dBA on nonresidential property, when measured at the nearest exterior wall of a residential or commercial building under separate ownership, or occupancy; or
9. Solid waste collection vehicles collecting waste at residential or nonresidential properties; or
 10. Sound produced by bells or chimes from a religious institution, provided the sound is during 7:00 a.m. to 10:00 p.m., or at some other time in accordance with the tradition of a church specifically on a religious holiday; or
 11. Sound produced by the operation of agricultural equipment, when such equipment is being used for the purpose of agricultural endeavors; or
 12. Activities conducted on public parks, public playgrounds, and public or private school grounds, including, but not limited to, school athletic and school entertainment events conducted during the hours of 7:00 a.m. to 12:00 a.m.; or
 13. Noncommercial public speaking and public assembly activities conducted during the hours of 7:00 a.m. to 10:00 p.m. on any public space or public right-of-way;
- B. Unless otherwise regulated by a current, valid permit issued by the permit official or specifically mentioned in 9.40.020A, specific noises that can constitute a noise nuisance include, but are not limited to the following:
1. Amplified sound at a park. Emitting amplified sound at a park, or on a public right of way adjacent to a park, is prohibited, except when authorized in accordance with a duly-issued governmental permit or posted park rule.
 2. Animals. Owning, keeping, possessing, or harboring any animal or animals which, by frequent or habitual noisemaking, unreasonably disturbs or interferes with the sleep, peace, comfort, or repose of a person of reasonable sensibilities. The provisions of this subsection shall apply to all private facilities, including but not limited to any private or commercial animal shelters or kennels, which hold or treat animals.
 3. Construction work. Operating or permitting to be operated any equipment used in commercial construction, repair, alteration, or demolition work on buildings, structures, streets, alleys, or appurtenances thereto, between the hours of 10:00 p.m. and 6:00 a.m. the following day, or in such a manner as to unreasonably disturb or interfere with the sleep, peace, comfort, and repose of a person of reasonable sensibilities.

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4. Emergency signaling devices. The intentional sounding or permitting the sounding outdoors of any fire, burglar or private entity emergency management alarm, siren, whistle, or similar stationary emergency signaling device for more than five minutes during any consecutive 60-minute period in such a manner as to unreasonably disturb or interfere with the sleep, peace, comfort, or repose of a person of reasonable sensibilities, except for those exemptions outlined in this chapter. Nothing herein shall be construed to authorize the operation of any emergency signaling device in violation of Chapter 5.13 (Security Alarm Systems) of this City Code.
5. Exterior loudspeakers. Operating or permitting to be operated between the hours of 10:00 p.m. and 7:00 a.m. any loudspeaker or sound-amplifying equipment in a fixed or movable position in or upon any street, alley, sidewalk, park, place, or public or private property for the purpose of commercial advertising, giving instructions, directions, talks, addresses, lectures, or transmitting music to any persons or assemblages of persons, or in such a manner as to unreasonably disturb or interfere with the sleep, peace, comfort, or repose of a person of reasonable sensibilities.
6. Horns and signal devices. 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.
7. Mechanical devices. Operating or permitting to be operated, any mechanical, electrical, or electronic device outdoors on residential property in such a manner as to unreasonably disturb or interfere with the sleep, peace, comfort, or repose of a person of reasonable sensibilities.
8. Off-road motor vehicles. No person shall operate or permit to be operated any motorized vehicle off a public right-of-way in such a manner as to unreasonably disturb or interfere with the sleep, peace, comfort, or repose of a person of reasonable sensibilities.
9. Open air discharge. 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 properly installed muffler or other device which prevents loud or explosive noises therefrom.
10. Other prohibited sound levels. Any emanations of the human voice or sound from any other source, including but not limited to fireworks, motor vehicle horns or other noise nuisance-creating object, device or equipment, whether amplified or not, which unreasonably disturbs or interferes with the sleep, peace, comfort, or repose of a person of reasonable sensibilities.

11. Power equipment. Operating or permitting to be operated any power equipment on residential property outdoors between the hours of 10:00 p.m. and 7:00 a.m. the following day, or in such a manner as to unreasonably disturb or interfere with the sleep, peace, comfort, or repose of a person of reasonable sensibilities.
12. Radios, television sets, musical instruments, and similar devices. Operating or permitting to be operated in a fixed or movable position or mounted upon or within any vehicle in or upon any street, alley, sidewalk, park, place, or public or private property any radio receiving set, musical instrument, television, phonograph, drum, or other machine or device for the production or reproduction of sound or vibrations in such a manner as to unreasonably disturb or interfere with the sleep, peace, comfort, or repose of a person of reasonable sensibilities.

Section 3. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.030 (Designated Noise Zones), be amended in its entirety as follows:

9.40.030 Sound Level Violations.

- A. It shall be unlawful for any person to conduct, permit, allow, or produce a sound that is discernable beyond the property lines of the property on which the sound is being produced that, when measured with a sound level meter using the standardized frequency weighting as specified by the American National Standards Institute, exceeds seventy (70) dB(A) between the hours of 10:00 p.m. and 7:00 a.m. daily for the property on which the sound is received.
- B. The dB(A) levels set forth in this section apply to a property where the sound is being received. Any sound that when measured at the property where the sound is being received exceeds the dB(A) level set forth in this section is a violation of this chapter.
- C. Procedure. Sound levels regulated in this Chapter shall be measured in accordance with a City-adopted policy.

Section 4. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.040 (Exterior Noise Standards), be amended in its entirety as follows:

9.40.040 Vibration.

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

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a manner as to unreasonably disturb or interfere with the sleep, peace, comfort and repose of a person of reasonable sensibilities, unless such activity is otherwise regulated under other applicable law.

Section 5. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.050 (Interior Noise Standards), be amended in its entirety as follows:

9.40.050 Sound level measurement.

Whenever portions of this chapter prohibit a sound level over a certain dB(A) limit, measurement of said sound level shall be made with a sound level meter by a duly authorized representative of the City Manager to include, but not be limited to an officer or official from Code Compliance, Police Department, or Planning and Inspections.

Section 6. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.060 (Additional Noise Standards), be amended as follows:

9.40.060 Identification of Violator.

A person responsible for violations of this chapter are identified as follows:

- A. At residential property. Any resident, owner or occupant present at the time of the offense, and any guest or trespasser with the ability to control the sound level at the time of the offense when no resident, owner or occupant is present at the time of the offense.
- B. At nonresidential property. Any property owner, business owner, operator, manager, employee in charge, and all persons in control or in possession of the noise nuisance generating instrument or device at the time of the offense.
- C. At any location with an unattended noise nuisance producing machine, device, instrument, animal or combination of same. Any person who leaves unattended any machine, instrument, device, animal, or any combination of same, which thereafter commences to produce a sound in violation of this chapter.

Section 7. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.070 (Noise Sensitive Zones) be amended as follows:

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9.40.070 Penalties.

- A. Any person who violates any provision of this Chapter shall, upon conviction, be guilty of a Class C misdemeanor and punished by a fine not to exceed five hundred dollars. Unless otherwise specifically set forth herein, or in state law as adopted, allegation and evidence of culpable mental state are not required for the proof of an offense defined by this Ordinance. Each act of violation and each day of violation is considered a separate violation.
- B. Any person who obstructs, impedes, or interferes with a representative of the city, with a representative of a city department, with monitoring equipment, or with a person who has been ordered to abate a situation pursuant to this chapter and who is lawfully engaged in such abatement is guilty of a Class C misdemeanor and upon conviction is punishable by a fine not to exceed five hundred dollars. Unless otherwise specifically set forth herein, or in state law as adopted, allegation and evidence of culpable mental state are not required for the proof of an offense defined by this Ordinance. Each act of violation and each day of violation is considered a separate violation.
- C. In addition to proceeding under authority of Subsections (A) and (B) of this Section, the city is entitled to pursue all other criminal and civil remedies to which it is entitled under authority of statutes or other ordinances against a person that remains in violation of this chapter.

Section 8. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.080 (Noise Level Measurement) be amended in its entirety as follows:

9.40.080 Enforcement.

The Director of the Department of Environmental Services, Director of Planning and Inspections Department, or the Police Chief or their designated representative, shall be responsible for the enforcement of this chapter.

Section 9. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.090 (Vibration) be amended in its entirety as follows:

9.40.090 Reserved.

Section 10. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.100 (Proposed Developments) be amended in its entirety as follows:

9.40.100 Reserved.

Section 11. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.110 (Motor Vehicle Maximum Sound Levels) be amended in its entirety as follows:

9.40.110 Reserved.

Section 12. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.120 (Exemptions) be amended in its entirety as follows:

9.40.120 Reserved.

Section 13. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.130 (Enforcement) be amended as follows:

9.40.130 Reserved.

Section 14. That Title 9 (Health and Safety), Chapter 9.40 (Noise), Section 9.40.140 (Violation - Penalty) be amended as follows:

9.40.140 Reserved.

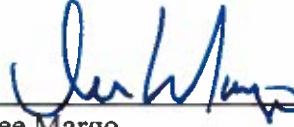
Section 15. Title 9 (Health and Safety), Chapter 9.40 (Noise) amendments shall take effect 180 days after adoption.

Section 16. Except as herein amended, Title 9 (Health and Safety) shall remain in full force and effect.

(Signatures on the following page)

PASSED AND APPROVED this 26th day of February, 2019.

CITY OF EL PASO



Dee Margo
Mayor

ATTEST:



Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Ana Schumacher
Assistant City Attorney

APPROVED AS TO CONTENT:



Ellen A. Smyth, P.E., Director
Department of Environmental Services

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