

**AGENDA PACKET MATERIALS: SEPTEMBER 18, 2019 MEETING  
2 ORDINANCES – ORD013 & ORD014 ATTACHED**

**ORDINANCE NO. 2019-ORD014**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DOUBLE HORN, TEXAS, DECLARING THE UNOPPOSED CANDIDATES FOR ELECTION TO THE OFFICES OF FIVE (5) ALDERMEN AND A MAYOR IN THE NOVEMBER 5, 2019 GENERAL ELECTION ELECTED TO OFFICE; PROVIDING THAT SUCH CANDIDATES SHALL BE ISSUED A CERTIFICATE OF ELECTION IN THE SAME MANNER AND AT THE SAME TIME AS A CANDIDATE ELECTED AT THE ELECTION, AND THAT SUCH CANDIDATES MUST QUALIFY FOR OFFICE IN THE SAME MANNER AS A CANDIDATE ELECTED AT THE ELECTION; PROVIDING THAT THE NOVEMBER 5, 2019 GENERAL ELECTION SHALL NOT BE HELD; FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS PASSED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Double Horn, Texas (the “City”) called a General Election (the “Election”) to be held in the City on November 5, 2019, for the purpose of electing five (5) Aldermen At-Large positions and the office of the Mayor; and

**WHEREAS**, pursuant to Sections 143.007(c), 146.054(b) and 201.054(a)(1) of the Texas Election Code, the deadlines for filing applications for a place on the ballot and declarations of write-in candidacy for the City’s Election has expired; and

**WHEREAS**, in accordance with Section 2.052 of the Texas Election Code, the City Secretary (being the authority responsible for having the official ballot prepared) has certified in writing to the City Council that the candidates are unopposed for election to the offices of Alderman and the office of Mayor, respectively; and

**WHEREAS**, the City Council has received the said certifications from the City Secretary (true and correct copies of which are attached hereto as Exhibit “A”) and, pursuant to Section 2.053 of the Texas Election Code, the City Council is authorized to declare, by ordinance, each unopposed candidate elected to the office of Council member; and

**WHEREAS**, pursuant to Section 2.051 *et seq.* of the Texas Election Code, the City Council may dispense with the necessity of holding the Election and may declare the results of the election; and

**WHEREAS**, each Alderman will draw lots to determine which two (2) Aldermen serve two-year terms and which three (3) Aldermen serve one-year terms until the November 2020 election.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DOUBLE HORN, TEXAS:**

**SECTION 1:** That the certifications of the City Secretary relating to the General Election of November 5, 2019 be hereby received and acknowledged by the City Council.

**SECTION 2:** That it is hereby found and determined that the named individuals herein are the only candidates to have qualified for a place on the ballot of such Election and no one has qualified for a list of write-in candidates pursuant to the requirements of the Election Code. Therefore, the candidates are unopposed for the seats on the Double Horn City Council for which they have filed.

**SECTION 3:** That the City Election for November 5, 2019 is hereby cancelled pursuant to the authority of Sec. 2.053 of the Texas Election Code, and the City Council does hereby declare the following individuals as duly elected to the following places on the Double Horn City Council:

<b><u>Candidate</u></b>	<b><u>Office</u></b>
R.G. Carver	Alderman
Glenn Leisey	Alderman
James E. Millard	Alderman
John Osborne	Alderman
Gwen Stirling	Alderman
Cathy Sereno	Mayor

A certificate of election shall be issued to each of the said candidates following the time the election would have been canvassed had the election been held and in the same manner as a candidate elected at the election had the election been held. Each of the said candidates must qualify for office in the same manner as provided for a candidate elected at the election, following the time the election would have been canvassed had the election been held.

The Mayor's term shall expire in November 2021. Upon expiration of the time the election would have been canvassed, each Aldermen shall draw lots to determine which two (2) Aldermen serve two-year terms and which three (3) Aldermen serve one-year terms until the November 2020 election:

<b><u>Alderman</u></b>	<b><u>Office</u></b>	<b><u>Expiration of Office</u></b>
_____	Alderman	November 2021
_____	Alderman	November 2022
_____	Alderman	November 2021
_____	Alderman	November 2022
_____	Alderman	November 2021

**SECTION 4:** The City Secretary is directed to post a copy of the Election Cancellation Notice at each designated polling place on November 5, 2019.

**SECTION 5:** That it is hereby found and determined that the meeting at which this ordinance was passed was open to the public as required by law, and that public notice of the time, place and purpose of said meeting was given, all as required by Section 551.041, Texas Government Code.

**SECTION 6:** It is declared to be the intent of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance is declared invalid by the judgment or decree of a court of competent jurisdiction, the invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance since the City Council would have enacted them without the invalid portion.

**SECTION 7:** This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance.

**SECTION 8:** This Ordinance shall take effect upon its final passage and approval by the City Council of the City of Double Horn, Texas.

**PASSED AND APPROVED** on September 18, 2019.

**CITY OF DOUBLE HORN**

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Cathy Sereno, Mayor

**ATTEST:**

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Karen Maxwell, City Secretary

**APPROVED AS TO FORM:**

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Patty Akers, City Attorney

**Exhibit "A"**  
**CERTIFICATION OF UNOPPOSED CANDIDATES**  
***CERTIFICACIÓN DE CANDIDATOS ÚNICOS***

**To: Cathy Sereno, Mayor**  
**Al: Cathy Sereno, Alcalde**

As the authority responsible for having the official ballot prepared, I hereby certify that the following candidates are unopposed for election to office for the general election scheduled to be held on November 5, 2019.

*Como autoridad a cargo de la preparación de la boleta de votación oficial, por la presente certifico que los siguientes candidatos únicos para elección para un cargo en la elección que se llevará a cabo el 5 de noviembre, 2019.*

<u>Office(s), Cargo(s)</u>	<u>Candidate(s), Candidato(s)</u>
Alderman/ <i>Concejal</i> –	R.G. Carver
Alderman/ <i>Concejal</i> –	Glenn Leisey
Alderman/ <i>Concejal</i> –	James E. Millard
Alderman/ <i>Concejal</i> –	John Osborne
Alderman/ <i>Concejal</i> –	Gwen Stirling
Mayor/ <i>Alcalde</i> –	Cathy Sereno

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Karen Maxwell  
City Secretary

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## **ORDINANCE NO. 2019-ORD013**

### **AN ORDINANCE OF THE CITY OF DOUBLE HORN, TEXAS ADOPTING REGULATIONS REGARDING HEALTH AND SANITATION OFFENSES GENERALLY AND REGARDING OFFENSIVE ODORS, LIQUEFIED PETROLEUM GAS (LPG), NOISE, BLASTING AND CONSTRUCTION ACTIVITIES SPECIFICALLY; DECLARING SUCH OFFENSES TO BE NUISANCES; PROHIBITING CERTAIN NUISANCES WITHIN THE CITY LIMITS; PROVIDING A PENALTY; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Sections 51.001 and 51.032 of the Local Government Code, the City Council of the City of Double Horn (the “City Council”) may adopt an ordinance, rule, or police regulation that is for the good government, peace, or order of the City of Double Horn, Texas (the “City”) or for the trade and commerce of the City and is necessary or proper for carrying out a power granted by law to the City or to an office or department of the City, not inconsistent with state law, that the City Council considers proper for the government of the City; and

**WHEREAS**, pursuant to Subsection 217.022 of the Local Government Code, the City Council shall prevent to the extent practicable any nuisance within the limits of the City and shall have each nuisance removed at the expense of the person who is responsible for the nuisance or who owns the property on which the nuisance exists; and

**WHEREAS**, pursuant to Chapter 342 of the Health and Safety Code the City Council is authorized by law to regulate public health and sanitation within the City in the areas of stagnant water, filth, carrion, weeds, dangerous weeds, and other unhealthy, unsanitary and unwholesome conditions; and

**WHEREAS**, under Section 113.051 of the Natural Resources Code, the Legislature has mandated that the Texas Railroad Commission “...promulgate and adopt rules or standards or both relating to any and all aspects or phases of the Liquefied Petroleum Gas (“LPG”) industry that will protect or tend to protect the health, welfare, and safety of the general public;” and

**WHEREAS**, the Texas Railroad Commission has adopted LPG Rules pursuant to Section 113.052 and 113.003 of the Natural Resources Code; and

**WHEREAS**, the City Council finds that property conditions and uses that cause or result in nuisances occurring on neighboring public property or the private property of others, harm the public welfare, property values, economy, and quality of life in the City; and

**WHEREAS**, the City Council finds that unregulated LPGs result in severe public nuisances harming the public welfare, property values, economy, and quality of life in the City, and that the

Texas Railroad Commission adopted rules or standards will protect or tend to protect the health, welfare, and safety of the general public; and

**WHEREAS**, the City Council of the City of Double Horn now deems it appropriate to establish regulations related to the public nuisances regulated herein within the city limits.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DOUBLE HORN, TEXAS:**

Section 1. Findings Incorporated. The above and foregoing premises are true and correct and are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2. Adopted. The regulations set forth in Exhibit "A", attached hereto and incorporated as if fully set forth herein for all purposes, are hereby adopted. This Ordinance shall be maintained by the City Secretary and a copy shall be available for public inspection during regular business hours.

Section 3. Savings/Repealing Clause. All City Ordinances shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed or amended ordinance, nor shall the repeal or amendment prevent a prosecution from being commenced for any violation if occurring prior to the repeal or amendment of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

Section 4. Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Double Horn hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

Section 5. Effective Date. That this Ordinance shall be in full force and effect from and after its date of passage and approval, and publication as provided by law.

**DULY ADOPTED** by the City Council of the City of Double Horn, Texas on the 12<sup>th</sup> day of September, 2019.

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Cathy Sereno, Mayor

**ATTEST:**

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Karen Maxwell, City Secretary

**APPROVED AS TO FORM:**

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Patty L. Akers, City Attorney

**Exhibit "A"**

**ARTICLE I. ADMINISTRATION AND GENERAL PROVISIONS**

Section 1. Health officer. The mayor of the city, with the approval of the city council, may from time to time appoint a health officer to enforce this ordinance and other ordinances of the city and laws and regulations of the state or of the United States pertaining to matters of public health and sanitation. By agreement with the county, the county health officer may also serve as the health officer for the city.

Section 2. Enforcement. The mayor of the city, with the approval of the city council, may from time to time appoint a code compliance official or code compliance officer, hereinafter referred to a code compliance official. The code compliance official is hereby authorized and directed to enforce the provisions of this Ordinance and other related ordinances and regulations of the city. The code compliance official shall have the authority to render interpretations of this Ordinance and to adopt city departmental policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this Ordinance and shall not have the effect of waiving requirements specifically provided for in this Ordinance.

Section 3. Notice to Owner. Unless otherwise stated herein, whenever any condition described in this ordinance is found to exist on any premises within the City, the Owner of such premises shall be notified in writing by the City and given ten (10) days from the receipt of said notice to comply or request in writing for additional time necessary to make the corrections. Additional time will not be unreasonably withheld. Violations that exist that are concerns for the safety and welfare of the public will result in citation without notice. The notice provided for herein shall be personally served on the Owner to whom it is directed or shall be given by letter addressed to such owner at his last known post office address on file with the county appraisal district. In the event personal service cannot be made and the Owner's address is unknown, such notice shall be given by a publication of at least one (1) time in a newspaper of general circulation published within the area.

**ARTICLE II. NUISANCES**

Section 1. Nuisances Generally. Whatever renders the ground, water, air or food hazardous or injurious to human life or health or is offensive to the senses or whatever is or threatens to become detrimental to the public health is hereby declared to be a nuisance, prohibited and made unlawful.

Section 2. Duty to abate. It shall be the duty of the owner, or the owner's agent, or the occupant or the occupant's agent, of any lot, building, premises or place of any kind within the city where any nuisance may exist or of any person who commits, causes, creates, permits, keeps or otherwise maintains a nuisance to remove, abate or destroy the same without delay.

Section 3. Duty to maintain. It shall be the duty of the owner, or the owner's agent, or the occupant or the occupant's agent, of any lot, building, premises or place of any kind within the city to maintain the premises in a clean, sanitary, and safe condition, including the disposal of rubbish, garbage, organic or inorganic waste, junk, or other waste in a lawful manner.

Section 4. Violation and Penalty.

(a) Any person who violates, or any person who causes or allows another person to violate, any provision of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine amount not exceeding five hundred dollars (\$500.00), except that an ordinance or police regulation that governs fire safety, zoning or public health and sanitation, including the dumping of refuse, may not exceed two thousand dollars (\$2,000.00). Each occurrence of any violation of this article shall constitute a separate offense.

(b) Whenever the prosecution of a nuisance results in a conviction and the court presiding over such prosecution finds the nuisance continues at the time of conviction, such court shall order and adjudge the removal, abatement or destruction of the nuisance, as the case may require, and shall issue a separate warrant therefor. The court shall inquire into the probable costs of such removal, abatement or destruction and shall tax the costs thereof against the defendant as costs in the case.

Section 5. Applicability. Under authority of the Local Government Code, section 217.022, any violation of provisions of this article is hereby declared a nuisance and extends to and shall be applicable within the corporate limits of the city.

Section 6. Offensive Odors prohibited.

(a) Any unreasonably noxious, unpleasant, or strong odor, which causes material distress, discomfort or injury to persons of ordinary sensibilities and extends beyond the boundaries of the property on which such odor originates, is hereby declared to be a nuisance, is prohibited and is made unlawful.

(b) Any odor of such character, strength and continued duration which substantially interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities is hereby declared to be a nuisance, is prohibited and made unlawful.

(c) The following things, among others, are declared to be offensive odors and health and sanitation nuisances in violation of this article and are hereby prohibited and made unlawful, but said enumerations shall not be deemed to be exclusive:

- (1) *Chemicals.* Offensive odors from the use or possession of chemicals or from industrial processes or activities which shall disturb the comfort and repose of persons of ordinary sensibilities.
- (2) *Smoke.* Offensive odors from smoke from the burning of rubbish, trash, rubber, chemical substances or other things or substances which shall disturb the comfort and repose of persons of ordinary sensibilities.
- (3) *Stagnant pools, refuse, and composting.* Offensive odors from stagnant pools, rotting garbage, refuse, offal, or composting which shall disturb the comfort and repose of persons with ordinary sensibilities.
- (4) *Dead Animals.* Offensive odors from dead animals which shall disturb the comfort and repose of persons with ordinary sensibilities.”

### **ARTICLE III. NOISE.**

#### **Section 1. General regulations.**

(a) Scope. This article applies to the control of all sound and noise existing within the city limits of the city.

(b) Overview. This article is designed to regulate noise by various alternative means in order to allow the enforcement of noise regulations at times when and by persons for whom noise meters are not available. A noise may be in violation of this article because it is disturbing to a reasonable person of ordinary sensibilities pursuant to section 5 or because it is prohibited without a permit pursuant to section 4. If a noise violates more than one of these provisions, the violation will be enforced under whichever provision is most applicable to the situation as determined by the enforcement officer of the city.

#### **Section 2. Definitions.**

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

Daytime. The times between seven o'clock a.m. and ten o'clock p.m.

Decibel (dB). Is the unit of measurement for sound pressure level at a specified location.

Director. The City of Double Horn's director of planning or the director's designee.

Emergency situation. A situation in which one must take actions to prevent a traffic accident or to attempt to prevent a traffic accident.

Emergency work. Any work or action immediately necessary to deliver essential services including, but not limited to, repairing water, gas, electric, telephone, sewer facilities, or public transportation facilities, removing fallen trees on public rights-of-way, or abating life-threatening conditions.

*Impulsive sound.* 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.

*Mayor.* The mayor of the City of Double Horn or the mayor's designee.

*Motor vehicle.* Any vehicle that is propelled or drawn on land by an engine or motor.

*Nighttime.* The hours from 9:00 p.m. through 7:00 a.m. Sunday through Thursday, and the hours from 11:30 p.m. through 7:00 a.m. Friday and Saturday.

*Noise-sensitive area.* Includes, but is not limited to, a posted area where a school, church, hospital, nursing home, day care facility, court, public library, or similar facility (where persons gather and have a reasonable expectation of quiet, peace or solitude) is located.

*Outdoor music venue.* A commercial establishment which allows or uses sound equipment outside of the enclosed building on the premises producing loud music which can be heard beyond the property line of the premises.

*Person.* Any individual, firm, business, entity, association, partnership, joint venture, or corporation.

*Public right-of-way.* Any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public, which is owned or controlled by any government entity.

*Public space.* Any real property or structure(s) on real property, owned or controlled by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

*Real property line.* Either:

- (1) The imaginary line, including its vertical extension, that separates one parcel of real property from another; or
- (2) The vertical and horizontal boundaries of each unit of a multi-unit building which is under separate ownership or tenancy.

*Residential area.* Any real property zoned for residential use in accordance with the city's zoning ordinance, all other real property which has been platted for residential use on which persons reside, and the public rights-of-way abutting any such real property. In a building with a commercial use on the bottom floor and residential use on the floors above, the horizontal boundary between the residential floors and commercial floor shall serve as the real property line and the residential floors shall be treated as a residential area.

*Sound equipment.* A loudspeaker, public address system, amplification system, musical instrument, radio, CD player, or other sound-producing device.

*Sound level.* The instantaneous sound pressure level measured in decibels obtained by the use of a sound level meter set for A-weighting on slow integration speed, unless otherwise noted.

*Sound level meter.* An instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting network used to measure sound pressure levels

conforming to type 1 or type 2 standards as specified in the latest version of the American National Standards Institute specifications for sound level meters (ANSI Standard S1.4-1983).

**Section 3. Restrictions on decibel levels.**

(a) **Maximum decibel levels.** No person shall cause, suffer, allow, or permit any of the following acts which are declared to be noise nuisances. If a noise is made on property which falls under more than one of the four categories enumerated in this section, the lowest maximum decibel level shall apply.

- (1) The making of noise which exceeds 63 decibels during the daytime or 56 decibels during the nighttime in residential areas and all abutting public rights-of-way;
- (2) The making of noise which exceeds 70 decibels during the daytime or 63 decibels during the nighttime in commercial or other business zoned areas as defined by the zoning ordinance of the city;
- (3) The making of noise which exceeds 80 decibels during the daytime or 65 decibels during the nighttime on industrial zoned property as defined by the zoning ordinance of the city; or
- (4) The making of noise which exceeds 80 decibels during the daytime or 65 decibels during the nighttime on any property which does not fit into any of the categories described in the foregoing subsections (1), (2) and (3), above.

(b) **Method of noise measurement.** Whenever portions of this article prohibit noise over a certain decibel limit, measurement of said noise should be made with a sound level meter meeting the standards prescribed by the American Standards Association and using the A-weighted scale. Prior to taking a measurement of the noise in question, the environment shall be observed to determine whether background noise is so close to the level of the sound being measured that a proper measurement is not possible. Measurements recorded shall be taken so as to provide a proper representation of the noise being measured. The microphone shall be screened from wind and water and otherwise used in accordance with the manufacturer's specifications. Measurements of noise emanating from private property shall be taken from the real property line of the property from which the noise is being generated. Measurements of noise being generated on public right-of-way or a public space shall be taken from a distance greater than or equal to 300 feet from the source of the noise.

**Section 4. Certain construction noises prohibited without permit.**

No person shall cause, suffer, allow or permit during the hours between nine o'clock p.m. and seven o'clock a.m., and/or on Christmas, New Year's Day or Thanksgiving, the creation of noise in connection with construction, drilling, earthmoving, excavation, demolition, blasting, alteration or repair work or the operation of any tools or equipment used for any such work, including the operation of a machine that separates, gathers, grades, loads, or unloads sand, rock, concrete or gravel in a residential area or within 600 feet of a residential area without first obtaining a permit pursuant to section 9. Such noise is declared to be a nuisance and does not have to exceed the specifications for sound levels contained in this article or disturb a particular person in order to constitute a violation of this section. This section does not apply to such work, construction, repairs or alterations that constitute an urgent necessity for the benefit and interest of the public safety, health or general welfare, such as repairs and emergency installations by any utility. The

requirements of this article are independent of and in addition to any other permits, certificates of occupancy, zoning or platting requirements or other requirements of the law and the fact that a person or an entity has acquired any other such authorization from the city shall not exempt them from the requirements of this article.

Section 5. Disturbance of reasonable person of ordinary sensibilities prohibited.

(a) Prohibited noises. In addition to the other noise restrictions provided in this article, no person shall make, cause, suffer, allow, or permit unreasonably loud noises in such a manner, or with such volume, intensity, or duration, so as to disturb a reasonable person of ordinary sensibilities. A noise for which the producer of the noise has a current and valid permit issued pursuant to section 9 of this article or which otherwise does not exceed the decibel level restrictions in this article shall be exempt from the provisions of this section. However, a decibel level measurement shall not be required for the enforcement of this section.

(b) Included noises. This section is intended to apply to, but is not limited to, unreasonable noises in the form of: barking dogs and other noises from animals in the care of a person; car alarms, vehicle exhaust, engine braking systems, radios, boom boxes, musical instruments, stationary loudspeakers, stationary amplifiers and other devices which reproduce or amplify sound; the use of any mechanical device operated by compressed air unless the device has been effectively muffled and reduced; the creation of any excessive noise disturbing to a person of ordinary sensibilities on any street or premises adjacent to any school, place of religious worship or other institution of learning while the same is in session, or any hospital, which unreasonably interferes with the operation or use of any such institution; the use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by the creation of noise to any performance, show or sale of merchandise; the cries of peddlers, hawkers and vendors; any noise during nighttime in a residential or noise-sensitive area which can be heard beyond the real property line of the premises from which the noise is originating; and noise from the shooting of a gun or fireworks, including such noise created at sports shooting ranges as defined in section 250.001 of the Local Government Code, where said noise is audible in residential or noise-sensitive areas.

(c) Noise producing vibrations from vehicles. No person shall cause, suffer, allow or permit operation of a radio, tape or CD player, portable media player, or other electronic or mechanical sound-making device from a motor vehicle in a manner which emits sound audible on a public right-of-way, street, or highway, to the human ear of a person with average and normal hearing, at a distance of 30 or more feet from the motor vehicle or which causes a person at that distance to be aware of a vibration accompanying the sound. It shall be presumed that the driver of any such vehicle is the operator of the sound-making device(s).

(d) Determination of unreasonable noises. Factors for determining whether a sound constitutes unreasonable noise under this section include, but are not limited to:

- (1) The proximity of the sound to sleeping facilities, whether residential or commercial;
- (2) The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
- (3) The time of day or night the sound occurs;

- (4) The duration of the sound;
- (5) Whether the sound is recurrent, intermittent or constant; and
- (6) An outdoor music venue located in a nonresidential zoning district which seeks to use sound equipment outdoor creating noise which exceeds the decibel levels permitted by this article.

Section 6. Exemptions.

The following acts and sounds shall be exempt from the requirements of this article.

- (1) The generation of sound for the purpose of alerting persons to the existence of imminent danger or an actual emergency;
- (2) The generation of sound in the performance of emergency work;
- (3) Sirens, whistles, or bells, lawfully used by emergency vehicles, or any alarm systems used by government entities in case of fire, collision, civil defense, police activity, or imminent danger;
- (4) Engine braking systems for emergency response vehicles and when used by commercial vehicles in an emergency situation;
- (5) Repairs or excavations of bridges, streets or highways by the city, the state, or the federal government during the nighttime when public welfare and convenience renders it impractical to perform the work during daylight hours;
- (6) Athletic events in a stadium, ballpark, or on public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to, school athletic events;
- (7) Law enforcement motor vehicles equipped with any communication device necessary in the performance of law enforcement duties or emergency vehicles equipped with any communication device necessary in the performance of any emergency procedures;
- (8) Noise made by a horn or other warning device required by federal or state law;
- (9) Sound produced by permitted parades and events sponsored and held by the city on public property for the general public, and pyrotechnic displays approved by the fire marshal;
- (10) Special events authorized by city council in which the city council specifically authorizes exemption or modification of this article;
- (11) An employee of a governmental entity engaged in the employee's official duty; or
- (12) A person operating a bell for a religious activity.

Section 7. Enforcement.

- (a) Nothing in this article shall prevent the city from having the authority to obtain voluntary compliance by way of warning, notice or education.
- (b) If a person's conduct would otherwise violate this article and consists of speech or communication delivered to others who have gathered to hear or observe speech or communication; or to others who have gathered to picket or otherwise express in a nonviolent manner a position on social, economic, political or religious questions; the person who is in violation of this article shall be ordered to, and have the opportunity to, move, disperse, or otherwise remedy the violation, prior to arrest or a citation being issued.
- (c) This violation of any provision of this article shall be cause for a citation to be issued by the city. In the event the noise violating this article is not stopped following issuance of a citation, the city may issue an administrative stop order to any person having possession or control over noise generating property to immediately halt the making of any sound which exceeds the decibel levels prescribed in section 3 of this article.
- (d) In the event a noise violation continues after the delivery of an administrative stop order, the city may apply to any magistrate for an administrative search warrant for the purpose of entering private property to investigate and identify noise nuisance producing devices which are violating this article and their owners, and to temporarily seize the devices in the event the owner of the offending noise producing device has been convicted of a violation of this article in the previous year. Any noise producing devices seized under this section shall be returned to any person requesting their return and presenting proof of ownership following twenty-four hours after the seizure of the devices. Any disputed ownership of the seized property shall be resolved at a hearing before a magistrate of the city. Nothing herein shall prevent the city from exercising any other rights or remedies available under this article or by other laws.

#### Section 8. Penalties.

- (a) It shall be unlawful for any person to violate any provision of this article, and any person violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not less than one dollar (\$1.00) and not more than five hundred dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues. For purposes of this subsection, allegation and evidence of a culpable mental state is not required for the proof of an offense under this article.

- (b) A violation of this article is a nuisance. The penal provisions imposed under this Article shall not preclude the city from filing suit to enjoin the violation. The city retains all legal rights and remedies available to it pursuant to local, state and federal law.

#### Section 9. Temporary permit.

- (a) Eligibility to apply for temporary permits. The following persons or entities may apply for a temporary permit to create or allow noise which would otherwise be prohibited by this article:

- (1) A person or entity seeking a permit for the noise generating construction activities prohibited without such permit in section 4;
- (2) An outdoor music venue located in a nonresidential zoning district which seeks to use sound equipment outdoor creating noise which exceeds the decibel levels permitted by this article.

(b) Application. A person seeking a permit under this section shall complete and file a written application for a permit with the city on a form provided by the city. Such application shall identify the nature and location of the noise source for which the application is made; the time during which the noise will be generated and the level of noise that will occur; reason for which the permit is requested, including potential hardships that will result to the applicant, his/her client or the public if the permit is not granted; and a description of noise control measures to be taken by the applicant to minimize noise and the impacts occurring therefrom and the schedule under which said measures will be implemented.

(c) Restrictions on issuance of permit. No permit shall be approved unless the city is satisfied based upon the application and other proof provided by the applicant that:

- (1) Noise levels occurring during the period will not constitute a danger to public health;
- (2) Compliance with this article would impose an unreasonable hardship on the applicant or the public without greater benefits to the public; and
- (3) The applicant has fully complied with the application procedures.

(d) Considerations in determining whether to grant permit. In making the determination of whether to grant a permit, the city shall consider:

- (1) The character and degree of injury to, or interference with, the health and welfare or the reasonable use of property that is caused or threatened to be caused;
- (2) The ability of the applicant to apply the best practical noise control measures; and
- (3) Proximity to residences at which reasonable persons would be disturbed by the noise.

(e) Other restrictions.

- (1) The city shall consider each application on the same basis as that used for other similarly situated applicants and shall make each variance decision free from consideration of race, sex, national origin, religion, the content of speech, or any other factors not provided for in the article;
- (2) No permit shall be issued for the operation of sound equipment at nighttime from a motor vehicle or for a location within 100 feet of a residential or noise-sensitive area; and
- (3) No permit shall be issued if the applicant has been convicted of more than two violations of a regulation under this article or there have been more than two convictions for violations of this article at the location for which the permit is sought in the year prior to the date on which the application is submitted.

(f) Issuance or denial of permit.

(1) The mayor shall be responsible for issuing or denying a temporary permit under subsection (a)(1) above. The city council shall be responsible for issuing or denying a temporary permit under subsection (a)(2) above.

(2) If the city council or mayor, as authorized, determines a permit should be issued pursuant to the criteria established in this section, a permit shall be issued which states the type of sound permitted, the location at which the sound will be permitted

(3) The decibel limits on a permit issued pursuant to this section shall be set at ten decibels over the limits which would otherwise apply pursuant to section 3 unless the city council or mayor, as authorized, determines a different limit is required under the circumstances.

(g) Time and frequency limits on permit.

(1) For a person seeking a permit under subsection (a)(1) above, a permit shall be issued for the expected duration of the construction noise for which the permit is issued.

(2) For a person seeking a permit under subsection (a)(2) above, a permit may not exceed 30 days in duration and maybe issued for a shorter period. A new permit application shall be required, and a new permit issued for any subsequent period.

(c) In all other cases, including special events, the time and frequency restrictions shall be at the discretion of the city council.

(h) Revocation of permit. The permit may be revoked by the mayor if the terms of the permit are violated; if it is learned that there were material misrepresentations made in the permit application; the applicant receives two convictions for violations of this article, as modified by the permit, take place within one year; or if there is a material change in any of the circumstances relied upon by the city council or mayor in granting the permit.

(i) Appeal of denial or revocation of permit.

(1) If the mayor denies or revokes a permit under this article, an applicant may appeal the mayor's decision to the city council by filing a written statement of the decision being appealed and the grounds for the appeal with the city secretary no later than the tenth business day after the date on which notice of the decision is delivered to the applicant or permit holder or placed in the U.S. mail in a stamped envelope addressed to their last known address.

(2) The city council shall consider the appeal on or before the first regular city council meeting following the tenth business day after receiving a request for an appeal.

(3) The city council may sustain, reverse, or modify the action appealed based on criteria established in this article. The city council's decision is final.

## **ARTICLE IV LIQUEFIED PETROLEUM GAS**

### Section 1. Adoption of liquefied petroleum gas safety rules.

The city hereby adopts the liquefied petroleum gas safety rules previously adopted by the Texas Railroad Commission, including any and all future amendments thereto.

Section 2. Exclusive regulation.

The liquefied petroleum gas safety rules adopted under section 1 of this article and the rules and standards, if any, promulgated with the permission of the Texas Railroad Commission's executive director shall be the city's exclusive regulations for liquefied petroleum gas.

Section 3. Construction of city ordinances.

All ordinances, orders, rules, or codes adopted by the city shall be construed in a manner consistent with this article on all matters relating to liquefied petroleum gas. In the event of conflict between any ordinance, order, rule, or code adopted by the city and this article, this article shall control.

Section 4. Adoption of rules, regulations, policies, practices, procedures, or standards.

City staff shall not adopt or enforce any rule, regulation, practice, policy, procedure, or standard that conflicts with this article.

Section 5. Construction consistent with Texas Railroad Commission.

This article shall not be construed so as to conflict with the Texas Railroad Commission's (or that of its successor) interpretation of the liquefied petroleum gas safety rules, including any and all future amendments thereto.