

**NOTICE OF SPECIAL JOINT CITY COUNCIL AND PLANNING &
ZONING COMMISSION MEETING
CITY OF TOMBALL, TEXAS**



**Monday, May 20, 2024
4:00 PM**

Notice is hereby given of a Regular meeting of the Tomball City Council, to be held on Monday, May 20, 2024 at 4:00 PM, City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

The public toll-free dial-in numbers to participate in the telephonic meeting are any one of the following (dial by your location): +1 312 626 6799 US (Chicago); +1 646 876 9923 US (New York); +1 301 715 8592 US; +1 346 248 7799 US (Houston); +1 408 638 0968 US (San Jose); +1 669 900 6833 US (San Jose); or +1 253 215 8782 US (Tahoma) - Meeting ID: 897 6493 6135 Passcode: 719286. The public will be permitted to offer public comments telephonically, as provided by the agenda and as permitted by the presiding officer during the meeting.

- A. Call to Order
- B. Public Comments and Receipt of Petitions
- C. Presentations
 - 1. Presentation and discussion regarding the Draft Tree Protection Ordinance.
 - 2. Presentation and discussion regarding draft amendments to Chapter 18-Environment, Article IV. Noise
- D. Adjournment

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 16 day of May 2024 by 6:00 PM, and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Tracylynn Garcia, TRMC, CMC, CPM
City Secretary

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodation or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at (281) 290-1019 for further information.

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: May 20, 2024

Topic:

Presentation and discussion regarding the Draft Tree Protection Ordinance.

Background:

Origination: Community Development Department

Recommendation:

Party(ies) responsible for placing this item on agenda: Craig T. Meyers, P.E.

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____ If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____ To account # _____

Signed Sasha Luna

Staff Member

Date

Approved by _____

City Manager

Date

1) Tree Protection

- a) Purpose. The purpose of this section is to preserve, protect and enhance existing trees and mitigate the effects of tree removal within the City of Tomball. Trees, particularly native species, add natural beauty and distinct local character, add shade, promote water conservation, provide locations for habitat, and increase property values. The provisions of this section are intended to support the long-term viability of healthy trees and promote natural ecological, environmental, and aesthetic quality in the community.
- b) Authority. The provisions of this section are adopted in accordance with state law and the City Charter. The provisions of this section shall be administered by the City Manager or his/her designee.
- c) Applicability. The provisions of this section shall apply to all property within the City limits. Applications for site development permits, approval of subdivisions of land or plats or tree removal requests within the City limits submitted after the date of adoption of this Code shall account for protected trees within the subject property in accordance with the provisions of this section and otherwise comply with the requirements of this section.
- d) Exemptions. Exemptions from the requirements of this section are as follows:
 - i) Subdivisions of land that total five (5) acres or less, or, where no subdivision is proposed, parcels of land five (5) acre or less.
 - ii) Trees that a degreed Urban Forester, Landscape Architect, or degreed Certified Arborist has determined and documented are dead, diseased, in severe decline, or deemed a safety hazard.
 - iii) Proposed public streets, utility easements, and required fire lanes.
 - iv) Or as otherwise exempt under applicable law, including Section 212.905 of the Texas Local Government Code.

2) Definitions

Caliper inch. The diameter of the trunk of a tree as measured at twelve (12) inches above grade. This measurement method is used for replacement trees.

Diameter inch (diameter breast-height). The diameter of the trunk measured four and one half feet (54 inches) above grade. This measurement method is used for mature trees during a tree survey.

Clear-cutting. The indiscriminate cutting, plowing, or grubbing of trees without regard to type or size for the purpose of clearing the land.

Critically alter. The uprooting, removing the canopy or severing the main trunk of a tree, or causing damage which may cause a tree to die. This includes but is not limited to the removal of a tree from a property, damage inflicted upon a tree by machinery, storage of materials or the compaction of soil above the root system of a tree, a change in the natural grade above the root system of a tree, or excessive pruning.

Critical Root Zone. An area of root zone to be protected to ensure the viability of trees to be preserved during construction. The area is defined at a ratio of 1-inch trunk diameter = 1-foot of critical root zone radius.

Floodplain. The area designated as being within the 100-year floodplain on the Federal Emergency Management Agency (FEMA) flood insurance map (FIRM).

Mitigation. The method by which trees are replaced whether through replanting on the subject property, planting or transplanting to another location or same property, or through payment of fees-in-lieu of replanting approved by the City.

Parcel of land. Land in the City of Tomball which has been platted or not platted.

Street perimeter buffer. A required buffer located at the perimeters of a proposed development site which is directly adjacent to a street or roadway. These areas are considered as areas of high visual impact, and preservation of existing vegetation located along the perimeter of the proposed development site is highly encouraged and used to screen the site and minimize potential nuisances between land uses.

Protective fencing. Chain link, silt fence, or other fencing used to protect Preserved Trees during construction activities.

Protected Tree. Any tree species listed as a shade tree in *City of Tomball Approved Tree, Shrub, Groundcover, and Vine List* that measures 18 diameter inches or larger and is within a building setback area as defined by the City's Zoning Ordinance. Species not so listed do not require protection or replacement.

Tree, dead (or declining). A tree that is dead or in severe decline with substantial structural defects, no remedial options available, and no chance of recovery, as determined and documented by a degreed Urban Forester, degreed Certified Arborist, or registered Landscape Architect.

Tree, replacement. Trees planted to mitigate the loss of trees during development.

Tree, shade. The largest plants in the landscape that provide the overhead structure needed for shading and under which other plants live and grow. They spread and give overhead structure when they reach maturity.

Tree fund. A City-administered fund established for collection of fees-in-lieu or replacement trees paid as mitigation and may include other contributions made in support of tree protection efforts.

Tree Survey. A plan or drawing to scale that identifies the exact size, location, condition (healthy, dead, or declining), and species of protected trees and the disposition of each protected tree during development. The plan shall indicate whether each protected tree is to be preserved or removed. The plan shall indicate the location and types of treatments to be utilized to protect trees during development such as fencing, mulching, root pruning, and other measures.

3) Protected Tree Species

- a) The requirements for tree replacement and mitigation as outlined in this section apply only to the shade trees listed in the *City of Tomball Approved Tree, Shrub, Groundcover, and Vine List*.

4) Tree Removal Permit

- a) Tree Removal Permit Required. A tree removal permit is required for the removal of any Protected Tree for properties greater than five (5) acres within the City of Tomball.
- b) Tree Removal Permit Application. A tree removal permit application and any associated permit application fees established by the City shall be submitted to the Community Development Department in conformance with the requirements of this section. All applications and filings shall meet the requirements as defined by the tree removal application checklist, as exists or may be amended, which shall be established and maintained by the Director of Community Development.
- c) Approval. The City Manager or his/her designee shall have the authority to issue a tree removal permit if it complies with all the requirements of this Code;
- d) Appeals. See *Section 10 - Appeals* for appeals.
- e) Expiration. A tree removal permit shall expire two years after its issuance.

5) Tree Survey

- a) Tree Survey Required. A tree survey shall be submitted prior to removal of any protected trees. The tree survey shall be performed and certified by a degreed Urban Forester, degreed Certified Arborist, registered Landscape Architect, or a registered professional land surveyor. The submitted tree survey shall include the exact size, location, condition (healthy, dead, or declining), and species of each tree that measures 18 caliper inches or larger. It is recommended that the tree survey include trees that measure eight (8) caliper inches or larger to retain eligibility for preserved tree credits according to *Section 8 – Tree Preservation Incentives* and *Section 50-115 – Screening, Buffering, and Fencing Requirements* of this Code.
- b) Tree survey requirements. The tree survey shall be submitted on a scaled diagram of the property. The diagram shall be at a scale of not less than one inch to 100 feet and may be an engineered drawing, survey, or other accurate illustration of the existing conditions which includes the following information:
 - i) An area map locating the property within the community;
 - ii) The boundaries of the property and its calculated area;
 - iii) The location of all existing streets, drainage and utility easements that are on or adjacent to the property;
 - iv) The location of any required Forested Buffer Zones;
 - v) Include all protected trees 18-inch diameter or larger and all trees 8-inch diameter or larger that will be preserved for tree credits. Each protected tree that is individually located by the survey will be flagged with blue plastic flagging. The tree survey submittals must include a table cross referenced to the diagram with the identification number, species, and diameter.
 - vi) Location of tree protection fencing to be installed at edge of the Critical Root Zone as defined by a ratio of 1 inch trunk diameter = 1 foot of radius.

c) Alternatives to a Tree Survey.

- i) No Protected Trees on Site. In lieu of a tree survey, the applicant may submit a sworn affidavit from a degreed Urban Forester, degreed Certified Arborist, registered Landscape Architect, or a registered professional land surveyor certifying that there are no protected trees on the property or all protected trees on the property are entirely dead or in severe decline. The affidavit shall be approved by the City Manager or his/her designee to be accepted as an alternative to the required tree survey.
- ii) Preservation Areas. In lieu of a tree survey, the applicant may submit a landscape plan together with the preliminary plat submittal or a tree removal permit depicting no-disturbance preservation areas that include substantial existing tree canopy coverage that will not be disturbed or critically altered during grading or construction, with the following conditions:
 - (1) The no-disturbance preservation areas shall constitute a minimum of 20% of the plat area;
 - (2) To confirm the existence of substantial existing tree canopy coverage in the designated areas, the alternative plan submittal shall include aerial photographs and on-site photos. City staff may deem it necessary to conduct a visit to the project site for visual confirmation, and if so, the applicant shall allow such visit;
 - (3) Trees within the designated areas do not need to be identified as a protected tree species; and
 - (4) The areas may be selected by the applicant, prioritized in the following order:
 - (a) Floodplains and riparian corridors;
 - (b) Street perimeter buffer areas;
 - (c) Parkland, open spaces, and outdoor amenity spaces;
 - (d) Other areas, as selected by the applicant.
 - (5) The City Manager or his/her designee must approve the landscape plan with the designation of the preservation areas, such approval may be withheld at the sole discretion of the City Manager or his/her designee.

6) Forested Buffer Zones

- a) Where property is being developed adjacent to existing residential subdivisions or properties zoned for residential uses that are not part of the new development, a buffer zone is required in the new subdivision development along the common boundary between the two subdivisions. The buffer zone shall be established as a platted reserve restricted exclusively for trees and landscaping, being a strip not less than 18 feet deep running parallel and adjacent to the common boundary and not less than 15 feet deep behind the back line of any easement or series of abutting parallel easements along the common boundary. All trees and underbrush within this buffer zone are subject to mandatory preservation.

7) Tree Replacement Standards

- a) Mitigation of Removed Trees. Protected trees meeting the minimum size and species requirements shall be replaced at a rate of 1 inch caliper of new trees for every 1-inch diameter of protected trees removed. The total number of caliper inches required to be mitigated shall not exceed 100 caliper inches per acre.
- b) Replacement Tree Size. All replacement trees required per the mitigation ratio shall be a minimum of four (4) caliper inches. Tree must be a species listed in *Table 1.1 Shade Trees*

- c) Landscape Credit. Replacement trees that are planted on site as mitigation for removal of protected trees are eligible to be counted toward the landscaping requirements of *Section 50-115 – Screening, Buffering, and Fencing Requirements* of this Code.
- d) Timing of Mitigation Compliance.
 - i) Replacement trees shall be planted within 90 days of issuance of tree removal permit. If the replacement trees cannot be planted within 90 days, the City Manager or his/her designee may approve a delay in replacement of up to six months after the date of tree removal permit issuance.
 - ii) If an applicant cannot replace the mitigation trees required or gain approval to plant on an alternate site, a fee-in-lieu payment into the tree fund shall be required before the tree removal permit can be issued.

8) Tree Preservation Incentives

- a) Preserved Tree Credits. Trees listed in Table 1.1 that are preserved onsite and measure eight (8) diameter inches or greater may be credited toward the replacement trees required for mitigation or toward the landscape requirements in *Section 50-115 – Screening, Buffering, and Fencing Requirements* of this Code.
- b) Preserved tree credits will be granted according to the standards set out in Table 2.1.

Table 1.1

Preserved Tree Size (in diameter inches)	Credits Toward Replacement Tree Requirement (Mitigation)
8" – 11"	8 caliper inches
12" – 17"	12 caliper inches

- c) Code Conflicts. In certain cases, the preservation of protected trees may be desirable enough to take priority over full compliance of certain conflicting subdivision and zoning regulations, including, but not limited to, setbacks, lot design standards, building heights, sidewalks, lighting, signage, parking spaces, parking lot design, and driveway separation. When a conflict exists between the preservation of a protected tree and the provisions of subdivision or zoning ordinances, the applicant may request an alternative standard or design. The applicant's request may be considered and approved by the City Manager or his/her designee, provided that a reasonable application of public health and safety standards are maintained with the proposed design.

9) Alternative Mitigation Methods

- a) Fee-in-Lieu payment. If replacement tree plantings cannot be fully accommodated on site with adequate space and conditions for long-term health, then an alternative fee-in-lieu payment to the Tree Mitigation Fund, which is hereby established, may be considered. If the applicant can demonstrate every effort has been made to plant the required replacement trees on site, the City Manager or his/her designee may consider a fee-in-lieu payment for the remaining balance of replacement tree value. Payments to the fund will be on a per caliper inch basis at a rate established in the City's Master Fee Schedule. Replacement trees and fee-in-lieu payments may be combined to satisfy the requirement.
- b) Off-site mitigation. If replacement tree plantings cannot be fully accommodated on site, then replacement trees may be proposed to be planted in a location mutually agreed upon

by the City Manager or his/her designee and the applicant, including parks and other public places such as streets, medians, and other common open spaces.

10) Appeals

- a) The Board of Adjustments shall consider an appeal seeking alternative compliance if it determines that all options to achieve compliance with this section have been exhausted and the required mitigation creates an undue hardship for the applicant. An applicant may submit an alternative compliance plan or request for relief from compliance as part of an appeal application to the Board of Adjustments. The applicant's proposed alternative compliance plan shall clearly delineate any proposed reductions to the standards and depict alternative standards or relief.

11) Tree Mitigation and Enforcement Funds

- a) The City Manager or his/her designee shall establish a dedicated account to be known as the tree mitigation fund.
 - i) Mitigation fees paid as provided by *Section 9 – Alternative Mitigation Methods* of this article shall be recorded for the benefit of the fund and accounted for in a manner that distinguishes such funds from other general funds of the city. The balance of such fund remaining at the end of each fiscal year shall be appropriated as the beginning balance of the fund for the following fiscal year. The assets of the fund may be used as provided by this section, and for no other purpose.
 - ii) The assets of the fund shall be expended to purchase and plant new trees in the public parks, parkways, medians and rights-of-way of public streets and upon the grounds of other public property of the city. Planting costs payable from the fund include the installation of related irrigation equipment and other measures necessary to the protection and subsequent maintenance of new following planting. An amount not to exceed 20 percent of the fund balance at the beginning of each fiscal year may be expended to promote public awareness of the objectives of this article, including Earth Day, or Arbor Day programs for the distribution of sapling trees to the general public.
 - iii) The City Manager or his/her designee shall establish a dedicated account to be known as the Tree Enforcement Fund.
 - (1) Penalties for violation paid as provided by *Section 12 – Penalties and Enforcement* of this article shall be recorded for the benefit of the fund and accounted for in a manner that distinguishes such funds from other general funds of the City. The balance of such fund remaining at the end of each fiscal year shall be appropriated as the beginning balance of the fund for the following fiscal year. The assets of the fund may be used as provided by this section, and for no other purpose.
 - (2) The assets of the fund shall be expended hire or contract with an urban forester to help with enforcement, inspections and reviews as well as to promote public awareness of the objectives of this article and may be used for necessary expenses, equipment, or contractual obligations related to the enforcement of this article.

12) Penalties and Enforcement

- a) Enforcement. The City shall determine compliance and enforcement in accordance with the provisions of this Code.
- a) Penalties. It is unlawful for any person to critically alter or remove a protected tree without mitigation in accordance with the provisions of this section. Any person, firm, corporation or entity violating any provision of this Code, as they exist or may be amended, could be deemed guilty of a misdemeanor, and on conviction thereof, could be fined accordance

with City's Codes of Ordinances ***Sec. 1-14. - General penalty for violations of Code; continuing violations.*** A violation of any provision of this Code shall constitute a separate violation for each calendar day in which it occurs. The penal provisions imposed under this Code shall not preclude Tomball from filing suit to enjoin the violation. Tomball retains all legal rights and remedies available to it pursuant to local, state and federal law.

- b) Violations. Each preserved tree that is removed without a tree removal permit shall be considered a separate occurrence. If individual trees cannot be identified but there is evidence of a violation, every 1,200 gross square feet of tree canopy removed, as identified on an aerial image within the last 12 months, shall be considered a separate occurrence.
- c) Clear-cutting. Clear-cutting of a property within 90 days of submitting a preliminary plat for the property or a portion thereof while also seeking approval of annexation, zoning, utility agreement, development agreement, economic incentives, or other discretionary approvals of the Tomball City Council could result in denial or refusal of consideration.
- d) Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/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. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

Tomball proposed trees

Tomball proposed trees	Avg Life	Growth per year	Max height
Japanese Red Maple <u>has to have PM shade</u>	100yrs	1-2' slow	6-8'
Oklahoma Redbud	40 yrs	1' slow	12-18'
Crabapple <u>has to have PM shade</u>	30-70 yrs	1-2' med	15-20'
Prairie Fire Flowering Crabapple	50-150 yrs	1-2' med	20'
Saucer Magnolia <u>has to have PM shade</u>	20 yrs	1-2' med	15-20'
Chinese Pistache or Pistachio	150 yrs	1-2' med	25-40'
Flowering Pear	15-25 yrs	2' fast	15-25'
Little Gem Magnolia	100+ yrs	1-2' med	25'
Desert Willow	50-75 yrs	2-3' fast	20-30'
Japanese Persimmon	60-75 yrs	2-3' fast	20-30'
Kousa Dogwood <u>has to have PM shade</u>	50-150 yrs	1-2' med	15-30'
Mexican Plum <u>has to have PM shade</u>	15 yrs	<<1' slow	15-30'
Possumhaw Holly	60-70 yrs	1-2' slow-med	15-30'
Redbud	20 yrs	1-2' med	20-30'
Bradford or Aristocrat Pear* Cleveland pear	15-25 yrs	4' fast	30-40'
American Holly	150-200 yrs	1 to 2' Slow	40-50'
Arizona Cypress	20-30 yrs	3' fast	40-50'
Caddo Sugar Maple	100 yrs	1-2' med	50'
Eastern Redwood Cedar or Eastern Red	150 yrs	1-2' med	40-50'
Cedar	150 yrs	1-2' med	40-50'
Lacebark Elm	20-40 yrs	1-2' med	40-50'
Texas Red Oak	80-200 yrs	2' med	30-50'
Chinquapin Oak	100 yrs+	1-2' med	40-60'
Red Maple	80-100 yrs	3' fast	65'
Sawtooth Oak	5-20 yrs	2' med	70'
Willow Oak	50 yrs	2' med	60-70'
American Sweetgum	150-200 yrs	2' Med.	75'
Green Ash	120-170 yrs	2' fast	50-75'
Bald Cypress	200 yrs +	2-3' Med	60-80'
Bur Oak	200-300 yrs	1' slow	70-80'
Live Oak	400 yrs	2' med-fast	40-80'
Pin Oak	200 yrs	2'+ fast	60-80'
Southern Magnolia	80 yrs	2' fastest mag.	60-80'
Sugar Maple	400 yrs	1-2' med	40-80'
Water Oak	30-50 yrs	2'+ fast	50-80'
Cedar elm	100 yrs	2' med	50-90'
Overcup Oak	400 yrs	1-2' med	60-90'
Shumard Oak	200 yrs	2-3' fast	70-90'
River Birch	50-150 yrs	3' fast	50-95'
Dawn Redwood	100+ yrs	2-3' fast up to 4'	70-100'
Leyland Cypress	10-20 yrs	3-4' fast	100'
London Plane Tree	100s of yrs	1-2' med	75-100'
Pecan	300 yrs	1-2' med	100'
Sycamore	200 yrs	2'+ fast	75-100'
Tuliptree Liriodendron	300 yrs	2' med	90-120'

City Council Meeting

Agenda Item

Data Sheet

Meeting Date: May 20, 2024

Topic:

Presentation and discussion regarding draft amendments to Chapter 18-Environment, Article IV. Noise

Background:

Origination: Community Development Department

Recommendation:

Party(ies) responsible for placing this item on agenda:

Craig T. Meyers, P.E.

FUNDING (IF APPLICABLE)

Are funds specifically designated in the current budget for the full amount required for this purpose?

Yes: _____ No: _____

If yes, specify Account Number: # _____

If no, funds will be transferred from account # _____

To account # _____

Signed Sasha Luna

Staff Member

Date

Approved by _____

City Manager

Date

PART II - CODE OF ORDINANCES
Chapter 18 - ENVIRONMENT
ARTICLE IV. NOISE

ARTICLE IV. NOISE¹

Sec. 18-186. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Entertainment district means the area located within 500 feet of FM 2920 between Calvert Road and FM 2978, within the area between SH 249 Tollway and SH 249 Business, and within 500 feet to the east of SH 249 Business between FM 2920 and Theis Lane.

Daytime hours means the hours from 7:00 a.m. on one day and 10:00 p.m. the same day.

dB(A) means the intensity of a sound expressed in decibels.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss that demands immediate action.

Emergency work means any work performed for the purpose of:

- (1) Preventing or alleviating the physical trauma or property damage threatened or caused by an emergency;
- (2) Restoring property to a safe condition following a fire, accident, or natural disaster;
- (3) Protecting persons or property from exposure to danger; or
- (4) Restoring public utilities.

Nighttime hours means the hours between 10:01 p.m. on one day and 6:59 a.m. the following day.

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 "nonresidential property" 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.

Property line means, with respect to single occupancy properties, the line along the ground surface and its vertical extension that separates the real property owned, leased, or occupied by one person from that owned, leased, or occupied by another person. With respect to shared occupancy properties, the term "property line" means the imaginary line that represents the legal limits of occupancy of any person who owns, leases, or otherwise occupies an apartment, condominium, hotel or motel room, office, or any other type of occupancy from that of other occupants.

Residential property means any real property developed and used for human habitation that contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, unless such premises are actually occupied and used primarily for purposes other than human habitation.

Sound amplifying equipment means any machine or device for the amplification of the human voice, music or other sound. The term "sound amplifying equipment" as used in this article shall not be construed as including standard automobile radios when used and heard only by occupants of the vehicle in which installed or warning

¹State law reference(s)—Presumption of unlawful noise, V.T.C.A., Penal Code § 42.01(c).

devices on authorized emergency vehicles or horns or other warning devices on other vehicles used only for traffic or human safety purposes.

Sound nuisance means any sound that either exceeds the maximum permitted sound levels specified in section 18-191, or for purposes of sections 18-188, 18-189, and 18-190, otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.

Sound truck means any vehicle, whether motor-driven, horse-driven or otherwise powered, having mounted thereon, or attached thereto, any sound amplifying equipment.

(Ord. No. 2009-01, § 2(30-181), 1-19-2009)

Sec. 18-187. General prohibition.

- (a) A person commits an offense if the person makes, continues, or causes to be made or continued any loud, unnecessary or unusual noise that annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others. In determining whether a noise is loud, unnecessary or unusual, the following factors shall be considered: time of day; proximity to residential structures; whether the noise is recurrent or constant; the volume and intensity of the noise; whether the noise has been enhanced in volume or range by any type of electronic or mechanical means; and whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.
- (b) A person commits an offense if he makes, assists in making, permits, continues, causes to be made or continued, or permits the continuance of any sound that either exceeds the maximum permitted sound levels specified in section 18-191 or, for purposes of sections 18-188, 18-189 and 18-190, otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.
- (c) The acts enumerated in the following sections of this article, among others, are declared to be loud, disturbing and unnecessary noises in violation of this article, but such enumeration shall not be deemed to be exclusive.

(Ord. No. 2009-01, § 2(30-182), 1-19-2009)

Sec. 18-188. Noisy vehicles generally.

The use of any motor vehicle so out of repair, so loaded, or so noisy that it creates loud and unreasonable grating, grinding, rattling or any other loud and unreasonable sound is hereby prohibited and declared to be unlawful.

(Ord. No. 2009-01, § 2(30-183), 1-19-2009)

Sec. 18-189. Amplified sound.

- (a) A person commits an offense if the person makes, assists in making, permits, continues, causes to be made or continued, or permits the continuance of any sound using any sound amplifier that is part of or connected to any speaker system, radio, stereo receiver, compact disc player, cassette tape player, microphone, or any other sound source, when operated:
 - (1) In such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants; or
 - (2) At any time with louder volume than is necessary for convenient hearing for persons who are in the vehicle or within the property or premises in which such sound amplifier is operated and who are voluntary listeners thereto.

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(Supp. No. 11)

The operation of any such sound amplifier in such a manner as to be plainly audible at a distance of 50 feet from a vehicle shall be presumed to be violative of this section. The operation of any such sound amplifier in such a manner that bass sounds are plainly audible at a distance of 50 feet from the property line of a property or premises in which the amplification is located shall be presumed to be violative of this section.

- (b) It is an affirmative defense to prosecution under this section that the sound source is a motor vehicle and that:
- (1) The motor vehicle is a mobile sound stage or studio that is being used on a stationary basis at a location not situated upon any street for the purpose of providing sound, during daytime hours, for an event or function; and
 - (2) The use is in compliance with all other provisions of this article, including but not limited to section 18-194.

(c) It is an affirmative defense to prosecution under this section if the sound source originates from within an entertainment district and occurs during daytime hours.

(Ord. No. 2009-01, § 2(30-184), 1-19-2009)

Sec. 18-190. Noisy animals and birds.

- (a) A person commits an offense if the person keeps an animal or bird that causes or makes frequent or long and continued sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of ordinary, reasonable persons of normal sensibilities and ordinary tastes, habits, and modes of living who reside in the vicinity thereof.
- (b) The keeping of a noisy animal or bird is hereby prohibited and declared to be a sound nuisance in violation of this article, regardless of whether the sound so created by the animal or bird is within the permissible levels specified in section 18-191.

(Ord. No. 2009-01, § 2(30-185), 1-19-2009)

Sec. 18-191. Maximum permissible sound levels.

- (a) In addition to the violations established by the preceding sections of this article, no person shall conduct, permit, or allow any activity or sound source to produce a sound ~~discernible at any location beyond the property lines of the property on which the sound is being generated that when measured as provided in section 18-192~~ exceeds the applicable dB(A) level listed below for the property on which the sound is received:
 - (1) *Residential property.*
 - a. 65 dB(A) during daytime hours or 75 dB(A) during daytime hours if the sound originates from a property located within an entertainment district.
 - b. 58 dB(A) during nighttime hours.
 - (2) *Nonresidential property.* 68 dB(A) at all times or 75 dB(A) during daytime hours if the sound originates from a property located within an entertainment district.

Any sound that exceeds the dB(A) levels set forth in this section under the conditions and measurement criteria set forth in this article is a violation of this article. Evidence that an activity or sound source produces a sound that exceeds the dB(A) levels specified in this section shall be prima facie evidence of a sound nuisance that

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unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this article.

- (b) Regardless of the measurable dB(A) level established in subsections (a)(1) and (2) of this section and measured as provided in section 18-192, the generator of any sound of such a nature as to cause persons occupying or using any property other than the property upon which the sound is being generated to be aware of sympathetic vibrations or resonance caused by the sound shall also be prima facie evidence of a sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this article.

(Ord. No. 2009-01, § 2(30-186), 1-19-2009)

~~Sec. 18-192. Maximum sound levels.~~

- ~~(a) All industrial or commercial businesses within the city limits shall conform to the maximum sound levels as set out in this section. Sound levels shall be measured with a sound level meter and an associated octave band analyzer, both manufactured in accordance with the specifications prescribed by the American Standards Association. Noise emission from any commercial or industrial operation shall not cause sound pressure levels greater than those listed in the table below, measured at any point at the commercial or industrial operation's boundary, either at ground level or at a habitable elevation, whichever is more restrictive.~~

Octave Band Center Frequency (Hz)	Sound Pressure Level (dB)*
31.5	85
63	71
125	61
250	52
500	47
1000	44
2000	39
4000	37
8000	35

~~*re: 0.0002 microbar~~

- ~~(b) The sound level produced by any industry shall not exceed the limits established in this section.~~

~~(Code 1978, § 5-8; Code 1993, § 14-8; Ord. No. 2009-01, § 1, 1-19-2009)~~

Sec. 18-193. Method of sound measurement.

Whenever portions of this article prohibit sound over a certain decibel limit, measurement shall be made with a Type 1 or Type 2 calibrated sound level meter utilizing the A-weighting scale and the slow meter response as specified by the American National Standards Institute (ANSI S1.4-1984/85A). Measurements recorded shall be taken so as to provide a proper representation of the sound being measured. The microphone of the meter shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound. A windscreen for the microphone shall be used. Measurements of sound generated shall be taken from the property line of the nonresidential property or residential property where the sound is received to the source of the sound.

(Ord. No. 2009-01, § 2(30-187), 1-19-2009)

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Sec. 18-194. Permit required for use of outdoor sound amplification equipment.

- (a) No person shall use or cause to be used any loudspeaker, loudspeaker system, sound amplifier, or any other machine or device that produces, reproduces, or amplifies sound outside of buildings or other enclosed structures in a manner that exceeds the levels specified in section 18-191, when measured from the property where the sound is being received, without first obtaining a permit to do so. The permit shall be granted only for the amplification of music or human speech, or both. The permit:
- (1) May be obtained by making application to the director of the city department so designated by the city manager.
 - (2) Requires payment of a fee as currently established or as hereafter adopted by resolution of the city council from time to time for the administrative costs of issuing the permit or a sworn statement of inability to pay the fee.
 - (3) Is valid for one 14-hour period between the hours of 8:00 a.m. and 10:00 p.m.
 - (4) Shall not be issued to the same or any other person for the same location more than twice during any 30-day period. In the case of a sound truck, location shall relate to the area traversed by the truck in one day.
 - (5) Shall not authorize, allow, or otherwise permit the production, reproduction, or amplification of sound that exceeds 75 dB(A) when measured from the property line of the nearest receiving property.
- (b) The permit application required to be filed pursuant to this section shall contain the following information:
- (1) The date of the application and the date and hours for which the permit is requested.
 - (2) The name and address of the applicant.
 - (3) The name and address of the person who will have charge of the sound amplifying equipment.
 - (4) The purpose for which the sound equipment will be used.
 - (5) The address and a description of the location where the sound equipment will be used.
 - (6) A description of the type of sound amplifying equipment to be used.

(Ord. No. 2009-01, § 2(30-188), 1-19-2009)

Sec. 18-195. Defenses.

The following defenses shall apply to any offense established in this article:

- (1) The emission of any sound was for the purpose of alerting persons to the existence of an emergency, danger, or attempted crime.
- (2) The sound was produced by an authorized emergency vehicle.
- (3) The sound was produced by emergency work.
- (4) The sound was generated:
 - a. At a lawfully scheduled stadium event;
 - b. By a parade and spectators and participants on the parade route during a lawful parade;
 - ~~c. By spectators and participants at lawfully scheduled amphitheater event;~~

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- d. By patrons and participants using cannons and gunfire during historical battle re-enactments for which a pyrotechnic permit was obtained and the explosives were inspected by the fire marshal;
 - e. By a pyrotechnic display that was inspected and approved by the fire marshal; or
 - f. By spectators and participants of an event, fun run, race, festival, fiesta, or concert that was sponsored or cosponsored by the city.
- (5) The sound was produced by the erection, excavation, construction, or demolition of any building or structure, including the use of any necessary tools or equipment, conducted between the hours of 7:00 a.m. and 8:00 p.m., which activity did not produce a sound exceeding 85 dB(A) when measured from the property line of the residential property where the sound was being received.
 - (6) The sound was produced by aircraft in flight or in operation at an airport, or railroad equipment in operation on railroad rights-of-way.
 - (7) The sound was produced by operating or permitting the operation of any mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, lawnmower, or any other similar device used between the hours of 7:00 a.m. and 8:00 p.m., provided the device did not produce a sound exceeding 85 dB(A) when measured from the property line of the nearest residential property where the sound was being received and was used for the maintenance or upkeep of the property on which it was operated.
 - (8) The sound was generated as authorized under the terms of a permit issued under section 18-194.
 - (9) The sound was produced by the operation of any air conditioning unit that did not produce a sound exceeding 65 dB(A) on residential property or 75 dB(A) on nonresidential property, when measured at or near 15 feet from the air conditioning unit producing the sound being measured.
 - (10) The sound was produced by church bells or church chimes when used as part of a religious observance or service during daytime hours, provided the sound did not cumulatively exceed five minutes, duration in any one-hour period.
 - (11) The sound was produced during daytime hours by activities conducted on public parks, public playgrounds, and public or private school grounds, including, but not limited to, school athletic and school entertainment events.

(Ord. No. 2009-01, § 2(30-189), 1-19-2009)

Sec. 18-196. Penalty.

Any person who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this article is guilty of an offense. Each hour or portion thereof in which any violation shall occur shall constitute a separate offense.

(Ord. No. 2009-01, § 2(30-190), 1-19-2009)

Secs. 18-197—18-215. Reserved.