

ORDINANCE NO. _____

AN ORDINANCE REPEALING CHAPTER 46, ARTICLE II , NOISE, OF THE CODE OF ORDINANCE OF THE CITY OF CLUTE, TEXAS; ADOPTING A NEW CHAPTER 46, ARTICLE II REGULATING NOISE IN THE CITY OF CLUTE, TEXAS; CONTAINING A PREAMBLE; CONTAINING DEFINITIONS OF TERMS USED IN THIS ORDINANCE; PROVIDING FOR ENFORCEMENT OF THIS ORDINANCE; MAKING IT AN OFFENSE FOR VIOLATION OF THIS ORDINANCE; CONTAINING A PENALTY CLAUSE AND THAT EACH AND EVERY OCCURRENCE SHALL CONSTITUTE A SEPARATE OFFENSE; CONTAINING A SEVERANCE CLAUSE; CONTAINING A REPEALER CLAUSE; AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS DESCRIPTIVE CAPTION HAS BEEN PUBLISHED TWICE IN THE BRAZOSPORT FACTS.

WHEREAS, Chapter 46, Article II of the Code of Ordinances of the City of Clute, as amended, regulates excessively loud noise within the City in order to protect the health, safety, welfare, and good order of the City and its inhabitants; and

WHEREAS, it is the intent of the City Council to prevent excessive noise, whenever possible, without substantially burdening the free exercise of speech and in every case within the constraints set by the Texas and United States Constitutions and applicable statutes, and this ordinance is intended to be interpreted as consistent with all such constraints; and

WHEREAS, the City's interest in regulating noise should and does take into account the time, place, and manner of such noise; and

WHEREAS, pursuant to Texas Local Government Code Ann. 51.001 the City is authorized to adopt regulations that are for the government, peace, or order of the City; and

WHEREAS, upon further review and consideration of the language of Chapter 46, Article II the City Council has determined that additional regulation is necessary for the good governance, peace and order of the City; and

WHEREAS, City Council finds that this Ordinance was adopted at a meeting which was open to the public and preceded by proper notice, as required by Chapter 551 of the Texas Local Government Code (the Open Meetings Act); and

WHEREAS, the City has previously adopted and amended Ordinances related to Noise and now desires to restate and amend these regulations in the manner set forth in this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLUTE, TEXAS:

First, the findings and recitations set out in the preamble to this ordinance are found to be true and correct and they are hereby adopted by the City Council and made part hereof for all purposes.

Second, Section 46 Article II of the Code of Ordinances of the City is hereby repealed, revised, rewritten and new provisions added so that hereafter Section 46, Article II entitled “Noise”, shall read as follows:

ARTICLE II. - NOISE

SECTION 46.20 - DEFINITIONS

“AUTHORIZED ENFORCEMENT OFFICER” means any:

Person or persons assigned by the City Manager and all police officers designated by the Chief of Police to enforce this chapter;

“DWELLING” means any multi-family residence, recreational vehicle permitted for habitation, occupied mobile home, or any building in which more than one residence is contained on a platted lot and located in an area zoned as residential in the comprehensive zoning statute of the City and additionally a hotel or motel.

“EXCESSIVE NOISE” means a sound which:

- (a) is louder than permitted in this chapter, or
- (b) disturbs a reasonable person of normal sensibilities.

“HOUSE” means a single-family residence, as the only residence, contained on a platted lot or lots located in an area zoned as residential in the comprehensive zoning statute of the City.

“SOUND EQUIPMENT” means any:

Mechanical or electrical device, machine, apparatus or instrument, including musical instrument, designed or used in a manner to intensify, to amplify or to reproduce the human voice, or to produce, reproduce, intensify or amplify any other sound.

SECTION 46.21 - APPLICABILITY

(A) This chapter does not apply to:

- (1) an employee of a governmental entity engaged in the employee’s official duty;
- (2) a person at a stadium or ball-park during a sports event;
- (3) a person at an authorized parade or street event;
- (4) a person operating a bell for a religious activity on church property;
- (5) a person operating an emergency vehicle; or
- (6) a person operating an audible warning device or train as required by state law.
- (7) a person operating a horn or signal device on any motor vehicle in manner to safeguard the health or safety of others or to avoid a collision;

(B) This article does not apply to a person issued a permit that authorizes the use of sound equipment pursuant to section 46-55;

SECTION 46.22- TIME RELATED RESTRICTIONS

(A) It shall be unlawful for any person to:

(1) make EXCESSIVE NOISE or use SOUND EQUIPMENT, that produces sound audible beyond the property line of the lot of a HOUSE between 10:00 p.m. and 7:00 a.m.;

(2) make EXCESSIVE NOISE or use SOUND EQUIPMENT that produces sound audible beyond the property line of the lot or beyond the boundary DWELLING that is audible in the common area of the property between 10:00 p.m. and 7:00 a.m., taking into consideration that the reasonable acceptable level of noise in a DWELLING is higher than in other circumstances;

(3) make EXCESSIVE NOISE or use SOUND EQUIPMENT in the common area of a property that is audible inside a DWELLING between 10:00 p.m. and 7:00 a.m., taking into consideration that the reasonable acceptable level of noise in a dwelling is higher than in other circumstances;

(4) operate a machine, vehicle, equipment, attachment or device, including but not limited to heavy equipment, generators, engines, landscape equipment, construction tools, etc., between 7:00 p.m. and 6:00 a.m. if noise or sound originating from the machine, vehicle, equipment, attachment or device, is audible or causes vibration at a HOUSE or DWELLING;

(5) use or permit the use of SOUND EQUIPMENT at a business that produces sound audible beyond the property line or boundaries of the business between the hours of 10:00 p.m. and 10:00 a.m.;

(6) use SOUND EQUIPMENT in a manner that produces EXCESSIVE NOISE on City property or easement, in a parking lot open to the public, or public park between the hours 10:00 p.m. and 10:00 a.m.

SECTION 46.23 - GENERAL RESTRICTIONS

(A) It shall be unlawful for any person to:

- (1) make EXCESSIVE NOISE that results in a reasonable complaint from a person or persons occupying a HOUSE or DWELLING in an area zoned as Residential under the comprehensive zoning ordinance of the City or in a hotel or motel;
- (2) make EXCESSIVE NOISE that results in a reasonable complaint from a person or persons that owns or leases property adjacent to or near the source of the EXCESSIVE NOISE;
- (3) operate SOUND EQUIPMENT in a vehicle that is audible or causes vibration extending to private property;
- (4) operate SOUND EQUIPMENT in a vehicle that is audible or causes vibration extending 50 feet or more from the vehicle.
- (5) make EXCESSIVE NOISE on City property or easement, in a parking lot open to the public, or in a public park.

SECTION 46.24 – PERMIT

Any person desiring to use or operate, or cause to be used or operated, and SOUND EQUIPMENT in the places or at the times set out in sections 46.22 or 46.23 shall make application to the city manager for a permit to do so and the city manager in his discretion may issue such permit in writing for good cause; but under no condition shall the permit be granted for a period more than 30 days. Any such permit may be renewed by the city manager for successive periods, but under no condition shall any such period be longer than 30 days. After notice and opportunity to be heard has been afforded a person to whom a permit has been issued under this section, the

city manager may in his discretion revoke such permit if he finds that the use of such SOUND EQUIPMENT can be heard to the disturbance or inconvenience of other persons.

SECTION 46.25 - PENALTIES AND ENFORCEMENT

(A) A person commits an offense if the person makes EXCESSIVE NOISE or uses SOUND EQUIPMENT in violation of a provision of this chapter.

(B) An offense under this chapter is a Class C misdemeanor, punishable by a fine upon conviction not to exceed \$500. Proof of a culpable mental state is expressly waived.

(C) Each and every occurrence of violation of this ordinance shall constitute a separate offense;

(D) this chapter shall be enforced upon complaint to an AUTHORIZED ENFORCEMENT OFFICER, or by the direct observation of violation by an AUTHORIZED ENFORCEMENT OFFICER;

(E) A violation of this chapter is a nuisance. The prosecution of an offense under this chapter does not limit the City's right to abate the nuisance, including the use of injunctive relief.

Third, it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgement or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance.

Fourth, all Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

Fifth, this ordinance shall take effect and be in force from and after the descriptive caption of this ordinance has been published twice in the Brazosport Facts.

READ, PASSED AND ADOPTED this ____ day of _____, 2018.

**Calvin Shiflet, Mayor,
City of Clute, Texas**

ATTEST:

APPROVED AS TO FORM ONLY:

**Rosie Poitevint, City Clerk,
City of Clute, Texas**

**Christopher Duncan, City Attorney,
City of Clute, Texas**