

ORDINANCE NO. 2020-20

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF TYBEE ISLAND SO AS TO REVISE PROVISIONS ADDRESSING PROHIBITED NOISE THAT IS UNREASONABLY LOUD, RAUCOUS, JARRING, DISTURBING OR A NUISANCE WITHIN THE AREA OF AUDIBILITY AND TO REPEAL INCONSISTENT OR CONFLICTING ORDINANCES AND TO ELIMINATE PROVISIONS REGARDING DECIBEL LEVELS FOR THE CONTROL OR MEASUREMENT OF NOISE AND SUBSTITUTING IN LIEU THEREOF A STANDARD OF PLAINLY AUDIBLE FROM A SPECIFIED DISTANCE FOR DETERMINATIONS OF OFFENSIVE OR PROHIBITED NOISE AND TO RECOGNIZE THE ADOPTION OF CIVIL PENALTIES FOR OFFENSES INCLUDING PROHIBITED NOISE, FOR THE REPEAL OR CONFLICTING ORDINANCES, TO ESTABLISH AN EFFECTIVE DATE AND TO AUTHORIZE THE ENFORCEMENT THEREOF

WHEREAS, the duly elected governing authority for the City of Tybee Island, Georgia, is authorized under Article 9, Section 2, Paragraph 3 of the Constitution of the State of Georgia to adopt reasonable ordinances to protect and improve the public health, safety, and welfare of the citizens of Tybee Island, Georgia, and

WHEREAS, the duly elected governing authority for the City of Tybee Island, Georgia, is the Mayor and Council thereof; and

WHEREAS, the governing authority desires to adopt ordinances under its police and home rule powers; and

WHEREAS, the control of sound and sound making devices which produce noise at levels that are unreasonably loud, raucous, jarring, disturbing or a nuisance to persons within the area of audibility is necessary for the peace and wellbeing of residents and visitors to the City; and

WHEREAS, Tybee Island is unique in the location of business establishments, a county pier where events are conducted and residential dwellings that coexist in close proximity to commercial establishments that provide gatherings, music and other sources of sound; and

WHEREAS, wind directions and wind speed can have significant impacts on the distribution of sounds; and

WHEREAS, the City of Tybee Island has for in excess of 15 years explored alternative methods of addressing noise, noise complaints, disorderly behavior in various residential and other areas; and

WHEREAS, the City has attempted to improve the peace, tranquility and health and safety of residents and occupants of residential dwellings by controlling or limiting unreasonably loud noises through sound level controls based on decibel levels and in the opinion of many, the efforts have not been as successful as desired; and

WHEREAS, court decisions upholding the constitutionality of the restrictions on noise and noise producing activity where doing so creates "plainly audible" disturbances too occupants of nearby properties have been recognized and resulted in successful prohibitions and prosecutions; and

WHEREAS, the City of Tybee Island has previously adopted administrative procedures for civil penalties for certain Code violations which can include unreasonably loud noise violations;

NOW THEREFORE, it is hereby ordained by the governing authority of the City of Tybee Island duly assembled as follows:

#### SECTION I

Existing Tybee Code Sections identified as Article 4 of Chapter 22 "Noises" Sections 22-110 through 22-112 are hereby repealed in their entirety and are replaced with the Code Sections hereinafter set forth and designated numerically as hereinafter set forth.

## ARTICLE IV. NOISES

### Sec. 22-110. 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:

*Construction* means any site preparation, assembly, erection, substantial repair, alteration, or similar action, for or of public or private rights-of-way, structures, utilities, or similar property.

*Demolition* means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

*Emergency* means any occurrence or set of circumstances involving actual or imminent physical or psychological trauma or property damage which demands immediate action.

*Emergency work* means any work performed for the purpose of alleviating or resolving an emergency.

*Enclosed Building* means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.

*Holidays* means those holidays recognized by the U.S. Office of Personnel Management.

*Mechanical Sound Making Devices* means any radio receiving device, television, stereo, musical instrument, phonograph sound amplifier or other machines or devices for the producing, reproducing or amplifying of sound and/or noise.

*Motor vehicle* means any motor-operated vehicle licensed for use on the public highways, but not including a motorcycle.

*Motorboat* means any vessel which operates on water and which is propelled by a motor, including, but not limited to, boats, barges, amphibious craft, water ski towing devices and hover craft.

*Motorcycle* means any motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground. The term shall include, but not be limited to, motorized bicycles and motor scooters.

*Noise* means any sound which disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

*Noisy Assembly* means any gathering of more than one (1) person which creates noise.

*Noise disturbance* means any sound which endangers or injures the welfare, safety or health of human beings, or disturbs a reasonable person of normal sensitivities, or devalues or injures personal or real property, or is hereinafter defined.

*Noise sensitive activities* means activities which should be conducted under conditions of exceptional quiet including, but not limited to, operation of schools, libraries open to the public, churches, hospitals, and nursing homes.

*Noise sensitive area* means any area designated for the purpose of ensuring exceptional quiet and clearly posted with "noise sensitive area" signs, because of the noise sensitive activities conducted therein.

*Official Public event* means any event put on by, adopted, approved or endorsed by the City.

*Person* means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, operative, state agency, municipality or other political subdivisions of this state, any interstate body, or any other legal entity.

*Plainly audible* shall mean any sound emanating from the specific sound-producing sources set forth below which can be heard from the distances set forth below, using the following sound measurement standards: Measurement shall be by the auditory senses of a person standing at a distance no less than the required minimum distance from the source of the sound. For music and other noise, words and phrases need not be discernable. For music and other noise, bass reverberations are included.

*Powered model vehicle* means any self-propelled airborne, waterborne, or land borne model plane, vessel, or vehicle, which is not designed to carry persons, including, but not limited to any model airplane, boat, car or rocket.

*Public right-of-way* means any street, avenue, boulevard, highway, sidewalk, lane or similar place which is owned or controlled by a governmental entity.

*Public space* means any real property, including any structure thereon, which is owned or controlled by a governmental entity.

*Public works project* means any project financed by public funds such as roads, highways, bridges or other construction on public or government owned property. It does not include projects merely approved by mayor and council.

*Real property boundary* means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

*Residential* means any property on which is located a building or structure used wholly or partially for living or sleeping purposes.

*School* means any place of learning or caring for children, both public and private.

*Sound* means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that cause compression and rarefaction of that medium.

The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

*Used* means and includes the words "intended," "designed," or "arranged to be used. "  
(Code 1983, § 11-3-2)

### **Sec. 22-111. Exceptions.**

The provisions of this article shall not apply to:

- (1) The emission of sound for the purpose of alerting persons to the existence of an emergency;
- (2) The emission of sound in the performance of emergency work by City or City Contractor;
- (3) Noises and/or sounds caused to be made by manufacturing, governmental, or commercial entities in the normal course of their business, however, the production of sound by gathering of persons, music or entertainment activities by restaurants, bars and/or similar establishments shall not be exempt under this subsection;
- (4) Agricultural activities, exclusive of those involving the ownership or possession of animals or birds;
- (5) Public mass transportation vehicles;
- (6) Church or clock carillons, bells, or chimes;
- (7) The emission of sound in the discharge of weapons or in fireworks displays for which a permit has been issued;
- (8) Public works projects;
- (9) Noises and/or sounds that are permitted by a special event permit pursuant to section 54-70, et seq; provided, however, that the producer or coordinator of the special event must comply with the terms, restrictions and conditions of the special event permit;
- (10) Sound volumes produced by radio, tape player, or other mechanical sound making device or instrument from within a motor vehicle on a street or highway, which sound is controlled by O.C.G.A. § 40-6-14;
- (11) Noises or sounds made by law enforcement and other public safety officials performing their public functions;
- (12) The emission of sound from a public space during an official public event; or
- (13) The emission of sound from a school or church during the regular scheduled hours of operation or during special events.  
(Code 1983, § 11-3-3)
- (14) Noises or sounds made by the exploding of consumer fireworks on January 1, the last Saturday and Sunday in May, July 3, July 4, the first Monday in September, and December 31 of each year after 10:00 a.m. and up to and including the time of 11:59 p.m.; and on January 1 of each year beginning at the time of 12:00 Midnight and up to and including the ending time of 1:00 a.m.
- (15) Generators during times of power outages.

### **Sec. 22-112. Noise disturbance prohibited.**

(a) *Prohibited conduct.*

(1) *Restrictions of 300 feet for 7:00 a.m. through 10:00 p.m. Sunday through Thursday and 7:00 a.m. through 12:00 midnight on Friday and Saturday and holidays.*

a. *Mechanical sound-making devices.* It is unlawful for any person or persons to play, use, operate, or permit to be played, used, or operated any Mechanical Sound Making Devices at such a volume and in such a manner so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 300 feet or more from the building, structure or vehicle, or in the case of real property, beyond the property limits, in which it is located, whichever is farthest, between the hours of 7:00 a.m. and 10:00 p.m. Sunday through Thursday and between the hours of 7:00 a.m. and 12:00 midnight on Friday and Saturday and holidays.

b. *Human-produced sounds.* It is unlawful for any person or persons to yell, shout, whistle, or sing on the public streets or sidewalks or on private property so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 300 feet or more from the place, building, structure, or in the case of real property, beyond the real property boundary, in which the person is located, whichever is farthest, between the hours of 7:00 a.m. and 10:00 p.m. Sunday through Thursday and between the hours of 7:00 a.m. and 12:00 midnight on Friday and Saturday and holidays.

c. *Commercial advertising.* It is unlawful for any person or persons to use, operate, or permit to be used or operated any radio receiving device, musical instrument, phonograph, loud speaker, sound amplifier or other machine or device for the production or reproduction of sound which is cast upon the public streets or other public property for the purpose of commercial advertising or which serves to attract the attention of the public to any building, structure or vehicle in such a manner so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 300 feet or more from the source of the sound cast upon the public streets or other public property or from the building, structure, or in the case of real property, beyond the real property boundary, in which it is located, whichever is farthest, between the hours of 7:00 a.m. and 10:00 p.m. Sunday through Thursday and between the hours of 7:00 a.m. and 12 midnight on Friday and Saturday.

d. *Party noise.* It is unlawful for any person or persons in charge of a party or other social event that occurs on any private property to allow that party or social event to produce noise in such a manner that such noise is plainly audible at a distance of 300 feet or more from the building or structure from which the noise is emanating or in the case of real property, beyond the real property boundary, on which the party or social event is located, whichever is farthest, between the hours of 7:00 a.m. and 10:00 p.m. Sunday through Thursday and between the hours of 7:00 a.m. and 12:00 midnight on Friday and Saturday and holidays. For the purposes of this subsection, a "person in charge of a party or other social event" shall mean any adult person who resides in or on the premises involved in such party or social event or the adult responsible for having leased, rented or who manages the property or is otherwise responsible therefore and is present at such party or social event. For the purposes of this subsection, "noise" shall mean the same sounds, or any combination thereof, as described in paragraphs a. or b. above.

(2) *Restrictions of 100 feet for 10:00 p.m. through 7:00 a.m. Sunday through Thursday and 12:00 midnight through 7:00 a.m. on Saturday and Sunday.*

a. *Mechanical sound-making devices.* It is unlawful for any person or persons to play, use, operate, or permit to be played, used, or operated any Mechanical Sound Making Devices at such a volume and in such a manner so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 100 feet or more from the building, structure or vehicle, or in the case of real property, beyond the property limits, in which it is located, whichever is farthest, between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 12:00 midnight and 7:00 a.m. on Friday and Saturday and holidays.

b. *Human-produced sound.* It is unlawful for any person or persons to yell, shout, hoot, whistle, or sing on the public streets or sidewalks or on private property so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 100 feet or more from the place on public streets and sidewalks, or in the case of private real property, beyond the real property boundary, on which the person is located, whichever is farthest, between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 10:00 p.m. and 7:00 a.m. on Saturday and Sunday and holidays.

c. *Commercial advertising.* It is unlawful for any person or persons to use, operate, or permit to be used or operated any radio receiving device, musical instrument, phonograph, loud speaker, sound amplifier or other machine or device for the production or reproduction of sound which is cast upon the public streets or other public property for the purpose of commercial advertising or which serves to attract the attention of the public to any building, structure or vehicle in such a manner so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 100 feet or more from the source of the sound cast upon the public streets or other public property or from the building, structure, or in the case of real property, beyond the real property boundary, in which it is located, whichever is farthest, between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 12:00 midnight and 7:00 a.m. on Saturday and Sunday and holidays.

d. *Party noise.* It is unlawful for any person or persons in charge of a party or other social event that occurs on any private property to allow that party or event to produce noise in such a manner so as to such noise is plainly audible at a distance of 100 feet or more from the building or structure from which the party noise is emanating or in the case of real property, beyond the real property boundary, on which the party or social event is located, whichever is farthest, between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 10:00 p.m. and 7:00 a.m. on Saturday and Sunday and holidays. For the purposes of this subsection, a "person in charge of a party or other social event" shall mean any adult person who resides in or on the premises involved in such party or social event and is present at such party or social event or the adult responsible for having leased, rented or who manages the property or is otherwise responsible therefore. For the purposes of this subsection, "noise" shall mean the same sounds, or any combination thereof, as described in paragraphs a. or b. above.

(3) Restrictions regarding noise produced by consumer fireworks between 10:00 a.m. and up to and including 11:59 p.m. on all days. It is unlawful for any person to use, explode or cause to be exploded any consumer fireworks to produce noise in such a manner that such noise is plainly audible at a distance of 100 feet or more from the place, or in the case of real property, beyond the

property limits in which the fireworks are being used, exploded or caused to be exploded, whichever is farthest, between the hours of 10:00 a.m. and 11:59 p.m. on all days. For the purposes of this section, the term "consumer fireworks" shall have the meaning set forth in O.C.G.A. § 25-10-1(a)(1), but such term shall not include those items excluded therefrom in O.C.G.A. § 25-10-1(b) as such code section is enacted as of July 1, 2018 or as may be amended in the future. See also, Sec. 42-66, and O.C.G.A. § 25-10-2 prohibiting the use of such fireworks after 11:59 p.m. except as specifically authorized.

*(4) Restrictions for areas within apartments, condominiums, townhouses, duplexes, or other such residential dwelling units.*

Except for persons within commercial enterprises that have an adjoining property line or boundary with a residential dwelling unit, it is unlawful for any person to make, continue, or cause to be made or continued any noise in such a manner as to be plainly audible to any other person a distance of five feet beyond the adjoining property line wall or boundary of any apartment, condominium, townhouse, duplex, or other such residential dwelling units with adjoining points of contact.

For the purposes of this subsection, "noise" shall mean human-produced sounds of yelling, shouting, whistling, singing, or mechanically-produced sounds made by radio-receiving device, television, stereo, musical instrument, phonograph sound amplifier or other machines or devices for the producing, reproducing, or amplifying of sound, or any combination thereof.

For the purposes of this subsection, "property line or boundary" shall mean an imaginary line drawn through the points of contact of (1) adjoining apartments, condominiums, townhouses, duplexes or other such residential dwelling units with adjoining points owned, rented, or leased by different persons; or (2) adjoining common areas or adjoining exterior walls. Said property line or boundary includes all points of a plane formed by projecting the property line or boundary including the ceiling, the floor, and the walls.

*(b) For Property bordering residential (not to exclude property separated by a right of way, street or easement, public or private) including other residential property.*

In addition to all other provisions of this Article, if the property boundary of a property borders residential property, the following shall apply:

- (1) It shall be unlawful for any person or persons to play, use, operate, or permit to be played, used, or operated any Mechanical Sound Making Devices between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Thursday and 12:00 midnight through 7:00 a.m. Friday and Saturday and holidays, unless the music is played exclusively within an enclosed building. In addition to the foregoing, any use or operation of any Mechanical Sound Making Devices between the restricted hours which produces noises that are plainly audible from the property boundary of the property is a violation of this section.
- (2) It shall be unlawful for any person or persons to constitute a Noisy Assembly, or permit property under his or her control to be used for a Noisy Assembly, between the hours of



10:00 p.m. and 7:00 a.m. Sunday through Thursday. And 11:00 p.m. through 7:00 a.m. Friday and Saturday and holidays, unless the Noisy Assembly is exclusively within an enclosed building. In addition to the foregoing, any Noisy Assembly between the restricted hours which produces noises than are plainly audible from the property boundary of the property is a violation of this section.

(c) *Equipment use restrictions.* Regardless of the other provisions of this Article, the following equipment may not be operated between the time of sunset and 7:00 a.m.: Monday-Friday and on Saturday and Sunday the time of sunset to 10:00 a.m.:

- (1) Electrical power tools.
- (2) Motor powered, muffler equipped lawn, garden, and tree trimming equipment except residential lawn mowers.
- (3) Construction equipment, which includes landscaper's lawn mowers and other landscaping motorized equipment.
- (4) Construction noise . Between the hours of 11:00 p.m. and 6:00 a.m., construction noise of any type, including, but not limited to, noise caused by the erection (including excavation), demolition, alteration, or repair of any building, as well as the operation of any earth-moving equipment, crane, saw, drill, pile driver, steam shovel, pneumatic hammer, hoist, automatic nailer or stapler, or any similar equipment, shall not be plainly audible within any residential zoning district more than 100 feet beyond the property boundary of the property from which the noise emanates.

A variance from the above-referenced hours of operation for construction noise may be requested, in writing, at least 48 hours prior to the proposed construction operation, for consideration by the Director of the Building Inspections and Permit Department. Such a request shall state:

- 1)The reasons that support a claim of urgent need based on specific loss or inconvenience for such a variation from the allowable work hours;
- 2)The impact that the denial of this request would have on the applicant's project and the surrounding properties;
- 3)The steps which have been taken by the applicant to communicate those needs and impacts to owners of surrounding and nearby properties;
- 4)The steps that have or will be taken to limit the impact of the proposed activity upon surrounding and nearby properties; and
- 5)The possible risks to public health and safety.

If the Director finds that the application adequately demonstrates the urgent need for a variance from the above allowable work hours, adequately provides for mitigation of the impact upon surrounding and nearby properties, and poses no additional risk to public health and safety, then permission shall be granted for a variance to alter the allowable work hours during one ten-day period.

(Code 1983, § 11-3-4; Ord. of 4-29-2005; Ord. of 7-26-2007)

SECTION II

All ordinances and parts of ordinances in conflict herewith are expressly repealed.

SECTION III

It is the intention of the governing body, and it is hereby ordained, that the provisions of this ordinance shall become effective and be made a part of the Code of Ordinances, City of Tybee Island, Georgia, and the sections of this ordinance may be renumbered to accomplish such intention.

SECTION IV

This ordinance shall be effective upon its adoption by the Mayor and Council pursuant to The Code of the City of Tybee Island, Georgia.

This Ordinance shall become effective on \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CLERK OF COUNCIL

FIRST READING: \_\_\_\_\_

SECOND READING: \_\_\_\_\_

ENACTED: \_\_\_\_\_