

**ORDINANCE NO. 20110609-039**

**AN ORDINANCE AMENDING CITY CODE SECTIONS 9-2-1 AND 9-2-3 TO ESTABLISH RESTRICTIONS AND AFFIRMATIVE DEFENSES RELATED TO THE OPERATION OF REFRIGERATED VEHICLES OR EQUIPMENT NEAR RESIDENCES; AND DIRECTING THE CITY MANAGER TO PROVIDE FINDINGS AND RECOMMENDATIONS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** Section 9-2-1 (*Definitions*) of the City Code is amended to read:

**§ 9-2-1 DEFINITIONS.**

In this chapter:

- (1) ACCOUNTABLE OFFICIAL means the City officer or employee designated by the city manager with a particular administrative or enforcement responsibility under this chapter.
- (2)[(4)] DECIBEL means sound pressure level as measured by a sound level meter using the "A" weighting network and the slow meter response as specified by the American National Standards Institute.
- ~~[(2)—DIRECTOR means the director of the Watershed Protection and Development Review Department.]~~
- (3) MUSIC OFFICE means the division or working group of a city department designated by the city manager with advisory and administrative functions related to permitting of outdoor live music.
- (4) NOISE means sound which:
  - (a) is louder than that permitted in this chapter, or
  - (b) disturbs a reasonable person of normal sensibilities.
- (5) OUTDOOR MUSIC VENUE means a commercial property where sound equipment is used to amplify sound that is not fully enclosed by permanent, solid walls and a roof.
- (6) RESPONSIBLE PARTY means a sound engineer, audio professional, or other person authorized to make decisions regarding the use of sound equipment permitted under this chapter.
- (7) SIXTH STREET DISTRICT means the area:

- (a) that begins at the intersection of IH-35 and Fifth Street (East);
  - (b) north along IH-35 to the intersection of Seventh Street (East);
  - (c) west along Seventh Street (East) to Congress Avenue;
  - (d) south along Congress Avenue to Fifth Street (East);
  - (e) east along Fifth Street (East) to IH-35, the place of beginning.
- (8) SOUND EQUIPMENT means a loud speaker, public address system, amplification system, or other sound producing device.
- ~~[(9) TEMPORARY EVENT IMPACT PLAN means a plan required in connection with approval of a temporary event permit under Section 9-2-52 (*Temporary Event Impact Plan*).]~~
- (9)~~[(10)]~~ SPECIAL EVENTS OFFICE means the division or working group of a city department designated by the city manager with planning, coordinating, and overseeing special events requiring city approval.
- (10)~~[(11)]~~ SPRING FESTIVAL SEASON means Wednesday through Sunday during the third week of March, unless the city manager designates an alternate five-day period for a particular year.
- (11)~~[(12)]~~ TEMPORARY CHANGE OF USE PERMIT means a permit issued by the building or fire code official to authorize a temporary increase in occupancy levels allowed by applicable technical codes for a property or structure.
- (12) TEMPORARY EVENT IMPACT PLAN means a plan required in connection with approval of a temporary event permit under Section 9-2-52 (*Temporary Event Impact Plan*).
- (13) TEMPORARY USE PERMIT means a permit issued by the Planning and Development Review Department under Chapter 25-2, Article 6 (*Temporary Uses*) to authorize a temporary activity not otherwise allowed as a principal or accessory use in a base zoning district.
- ~~[(14) ACCOUNTABLE OFFICIAL means the City officer or employee designated by the city manager with a particular administrative or enforcement responsibility under this chapter.]~~
- (14)~~[(15)]~~ WAREHOUSE DISTRICT means the area:
- (a) that begins at the intersection of Congress Avenue and Cesar Chavez Street;
  - (b) north along Congress Avenue to Fifth Street (West);

- (c) west along Fifth Street (West) to Guadalupe Street;
- (d) south along Guadalupe Street to Cesar Chavez Street; and
- (e) east along Cesar Chavez Street to Congress Avenue, the place of beginning.

~~(15)~~~~(46)~~ WATERCRAFT means a boat or other structure designed to float on water, and includes a barge, marina, or similar floating object.

**PART 2.** Section 9-2-3 (*General Restrictions*) of the City Code is amended to read:

**§ 9-2-3 GENERAL RESTRICTIONS.**

(A) A person may not:

- (1) make noise or use sound equipment in public between 10:30 p.m. and 7:00 a.m.;
- (2) use or permit the use of sound equipment at a business in excess of the decibel limits prescribed by this chapter;
- (3) make noise or play a musical instrument audible to an adjacent business or residence between 10:30 p.m. and 7:00 a.m.;
- (4) operate a machine that separates, gathers, grades, loads, or unloads sand, rock, or gravel within 600 feet of a residence, church, hospital, hotel, or motel between 7:00 p.m. and 6:00 a.m., except for the installation of concrete as authorized under Section 9-2-15 (*Permit for Concrete Installation During Non-Peak Hour Periods*); ~~or~~
- (5) use or authorize or allow the use of a vehicle, equipment, attachment, or device associated with a vehicle, for cold hold, refrigeration, or freezing of any consumable food or beverage product, including water in any form such as consumer ice or ice used to refrigerate food or beverage, between 7 p.m. and 6 a.m. if noise or sound originating from the vehicle or any associated equipment (such as an engine or generator, equipment, attachment, trailer or device) is audible or causes vibration at a residence;
- ~~(6)~~~~(5)~~ operate sound equipment in a vehicle audible or causing a vibration 30 feet from the equipment~~[-]; or~~
- ~~(7)~~~~(6)~~ operate sound equipment in a watercraft audible or causing a vibration 100 feet from the equipment.

(B) It is an affirmation defense to a violation of this section that:

- (1) the audible sound or vibration occurred when the vehicle or associated equipment or device was being actively loaded, unloaded, or serviced in a manner that complied with all applicable codes, ordinances, and regulations;
- (2) the audible sound or vibration:
  - (a) occurred when the use of the vehicle or associated equipment or device occurred for a period of 48 hours or less on or adjacent to the premises of a business licensed by the health authority to prepare, serve, or sell consumable food or beverage items; and
  - (b) that the use was the minimum necessary for the licensee to achieve or maintain temporary cold hold, refrigeration, or freezing of potential hazardous food products because of a documented emergency at the licensed premises, such as an equipment or utility failure or malfunction that prevented or compromised the compliant operation of equipment necessary for food safety; or
- (3) at least 48 hours in advance of the alleged conduct:
  - (a) the person charged obtained consent to the noise or vibration, as described in this chapter, from at least one adult resident of each affected dwelling unit located on a property within 600 feet of the location where vibration or sound was apparent; and
  - (b) the consent was provided in writing, on a form approved by the City.
- (C) The City Manager may authorize a department to adopt rules under § 1-2 (*Adoption of Rules*) to implement, administer, enforce, or comply with Chapter 9-2.
- (D) Violation of Chapter 9-2 or any rule adopted under § 1-2 pursuant to Chapter 9-2 is a violation of City Code, chargeable as a Class C misdemeanor by a fine upon conviction not to exceed \$500. Proof of a culpable mental state is expressly waived.

**PART 3.** The City Manager is directed to provide to Council not later than January 1, 2012, summary findings relating to the number and resolution of complaints received by the City under Section 9-2-3 (A)(5), along with the City Manager's recommendations for any changes to Section 9-2-3 (A)(5).

**PART 4.** This ordinance takes effect on June 20, 2011.

**PASSED AND APPROVED**

\_\_\_\_\_, June 9 \_\_\_\_\_, 2011      §  
   §  
   §  
   \_\_\_\_\_  
   Leo Leffingwell  
   Mayor

**APPROVED:** \_\_\_\_\_  
   Karen M. Kennard  
   City Attorney

**ATTEST:** \_\_\_\_\_  
   Shirley A. Gentry  
   City Clerk