



ZPC Meeting Agenda

Notice is hereby given of a **workshop and regular meeting of the Zoning and Planning Commission** of West University Place to be held on **Thursday, September 12, 2019 at 6:00 pm** in the **Municipal Building**, 3800 University Boulevard, West University Place, Texas, for the purpose of considering the following agenda items:

Note: The Commission reserves the right to convene in a closed session for any agenda item if the need arises pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code

Call to Order

6:00 PM

1. **Workshop.** Matters relating to a discussion of possible amendments to the property maintenance and noise ordinance provisions of the Code of Ordinances for the purpose of gathering input and commentary from members of the public.

Immediately Following Workshop

2. **Notices, Rules, Etc.** Matters relating to notices, introductions, rules, meeting procedures and updates.
3. **Property Maintenance Regulations.** Matters related to high grass and weeds, rubbish, intrusive plant species, etc.
4. **Noise Regulations.** Matters related to the general noise regulations regarding equipment, loudspeakers, construction activities, quiet hours, etc.
5. **Minutes.** Matters regarding approval of minutes from August 8, 2019.

ADJOURN

In compliance with the Americans with Disabilities Act, if you plan to attend this public meeting and you have a disability that requires special arrangements, please contact the person that signs this below at least 24 hours prior to the meeting so that reasonable accommodations can be made to assist in your participation in the meeting. The Municipal Building is wheel chair accessible from the west entrance and specially marked parking spaces are available in the southwest parking area. Special seating will be provided in the Meeting Chambers.

I certify that the attached notice and agenda of items to be considered by the West University Place Zoning and Planning Commission on September 12, 2019 was posted on the Municipal Building bulletin board on or before September 9, 2019 at 6:00 o'clock pm.

D Scarcella

Debbie Scarcella, City Planner, dscarcella@westutx.gov, 713-662-5893



Agenda Item #1

SEE

AGENDA

ITEMS 3 & 4

Agenda Item #3

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August 8, 2019

Exhibit "A"

Amend Chapter 42, Article III. Condition of Private Property by replacing Sections 42-46 through 42-51 in their entirety and replacing with the proposal below:

ARTICLE III. – CONDITION OF PRIVATE PROPERTY

Sec. 42-46. - Purpose.

The regulations of this Article are necessary to ensure that private property is maintained at a level that will not create a public nuisance which may include but is not limited to brush, garbage, weeds, refuse, rubbish, or any unsanitary condition likely to attract rodents and/or disease.

Sec. 42-47. - Applicability.

All parcels of property within the municipal limits of the City shall adhere to the regulations of this Article which are consistent with Chapter 342, *Local Regulation of Sanitation*, and Chapter 343, *Abatement of Public Nuisances*, of the State of Texas Health and Safety Code.

Sec. 42-48. - Regulations.

- (a) **Public Nuisances to be Abated.** The following circumstances are deemed to be a public nuisance and shall be fully abated by the owner of the property:
- (1) The existence of an excessive accumulation of weeds that exceed 10 inches in height and remain on site more than seven consecutive days.
 - (2) Grasses, other than ornamental or decorative grasses, that exceed 10 inches in height and remain on site more than 7 consecutive days;
 - (3) Any garbage allowed to remain in one place for more than 24 hours and:
 - (i) Is not located fully within a receptacle and
 - (ii) Makes the premises unwholesome.
 - (4) Any brush or rubbish allowed to remain in one place the greater of more than 72 hours or the next scheduled trash pickup day.
 - (5) Any stagnant water or unfilled holes on the premise which can retain water and allow it to become stagnant or produce any unwholesome condition on the property for more than seven consecutive days;
 - (6) The accumulation or storage of any goods or inventory that can be viewed from the public right-of-way and used in connection with any commercial activity, including without limitation building materials;
 - (7) Any discarded personal property allowed to remain in one place longer than seven consecutive days;
 - (8) Any item that is spoiled, corroded, broken, or inoperable and allowed to remain in one place longer than seven consecutive days; or

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(9) Any spillage of oil or grease from a grease trap or grease or oil containment area and not abated within 72 hours.

(b) **Owner Responsibility.** The owner of the property at issue has a responsibility to fully abate the public nuisance through the owner's privately funded means.

Sec. 42-49. – Enforcement.

(a) **Right of Entry.** The Public Works Director or his designee is authorized to inspect any property within the municipal boundaries of the City at any reasonable time provided that the inspection is from the public right-of-way or the inspection is consistent with the requirements of Section 18-23, *Right of Entry*, of the City's Code of Ordinances.

(b) **Violations.**

(1) *Issuance of Citations.* [Should there be a request to abate requirement before a citation can be issued? As a practical matter, that is going to happen in the ordinary course. It's similar to the approach in the noise ordinance.]The Public Works Director or his designee is authorized to issue citations for violations of the terms and provisions of this Section to the owner or occupant of the property upon which condition exists.

(2) *Procedures and Penalties.* Any violation of this Section, and any associated penalties that result from it, shall be dealt with consistent with the requirements of Section 1-7, *General penalties for violations; alternative enforcement*, of the City's Code of Ordinances.

(c) **Municipal Abatement.** Whenever there are conditions in violation of this Article, the Public Works Director or his designee is authorized to abate those conditions by doing work or making improvements upon the property provided that the process of conducting the work is pursuant to Section 342.006, *Work Improvements by Municipality; Notice*, of the State of Texas Health and Safety Code.

(d) **Municipal Lien.** Pursuant to Section 342.007, *Assessment of Expenses; Lien*, of the State of Texas Health and Safety Code, the City has the right to obtain a lien on the property at issue to recover any costs associated with municipal abatement process as described above in subsection (b).

(e) **Separate Offenses.** Each single violation of any regulation of this Section 42-48, *Regulations*, shall be considered a separate and distinct offense.

(f) **Separate Remedies.** The remedies prescribed by this Section are separate, and the City may avail itself of one or more without precluding any of the others. Under no circumstances will a prosecution for a violation affect the right of the City to pursue abatement, liens, or both.

Sec. 42-50. - Definitions.

(a) **Abate** means to eliminate or remedy by removal, repair, or rehabilitation.

(b) **Brush** means all uncultivated shrubs, bushes, and small trees.

(c) **Discarded** means any item of personal property that is allowed to remain in one place outside and exposed to the elements, with no apparent use being made of it. The term "discarded" may include, but is not limited to, motor vehicles or parts of motor vehicles, trailers or parts of trailers, furniture, fixtures, carpets, or debris from any construction, remodeling, or demolition activity.

(d) **Garbage** means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.

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- (e) **Premises** means all privately owned property including vacant land.
- (f) **Receptacle** means a container that is composed of durable material and designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin, or other pests.
- (g) **Rubbish** means nondecayable waste from a public or private establishment or residence.
- (h) **Uncultivated** means in a primitive state that is not domesticated or cultivated and is produced by nature.
- (i) **Unwholesome** means all stagnant water, filth, carrion, impure matter and any condition liable to produce disease.
- (j) **Weed** The term “weed” may include, but is not limited to, uncultivated, invasive vegetative growth which is liable to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests and grasses that are harmful to humans by touch, such as poison ivy, poison oak, and poison sumac.

Agenda Item #4

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August 8, 2019

Amend Article II-Noise in its entirety by substituting the following provisions:

ARTICLE II. - NOISE

Sec. 54-39. - Unreasonable noise prohibited.

It is unlawful for any person to intentionally or knowingly make or create any noise of such volume, intensity, or duration as to disturb or annoy a reasonable person of normal sensitivity in the usual and expected enjoyment or the use of a dwelling. In determining whether a violation of this paragraph occurs, the following may be considered:

- (1) The level, frequency, or duration of the noise;
- (2) The proximity of the noise to the dwelling;
- (3) The nature and zoning of the area within which the noise occurs; and
- (4) The time of the day or night the noise occurs.

Sec. 54-40.- General noise level limit.

Except as provided in Section 54-41, it is unlawful for any person to make, assist in making, permit, continue, cause to be made or continued, or permit the continuance of any sound at any location beyond the property lines of the property on which the sound is being generated that when measured exceeds the applicable dB(A) level listed below for the property on which the sound is received.

The general maximum limits for any noise, except for noises specifically listed in Section 54-41 of this chapter, are as follows:

- (1) *Residential property:*
 - a. 58 dB(A) during residential quiet hours.
 - b. 65 dB(A) during all other times..
- (2) *Nonresidential property:* 68 dB(A) at all times.

Sec. 54-41. - Enumeration of specific noises.

(a.) The following noises, among others, are declared to be loud, disturbing noises in violation of this article (this enumeration is neither exhaustive nor exclusive of other noises):

- (1) The noise of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control; the same noise made while in motion, except as a danger signal after, or as, brakes are being applied and deceleration of the vehicle is intended; any unreasonably loud or harsh sound created by means of any such signal device; and the sound of such device made for any unreasonable period of time.
- (2) The sound of:
 - a. Any vehicular or portable radio, phonograph, disc player, tape player or any musical instrument that is plainly audible outdoors from a distance of 100 feet or more (or 50 feet or more during residential quiet hours); or

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- b. Any loudspeaker or amplifier operated outdoors during residential quiet hours that is plainly audible from a distance of 50 feet or more.

"Plainly audible" means any sound that can be detected by a person using his or her unaided hearing faculties. Example: If the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the enforcement officer need not determine the title of a song, specific words, or the artist performing the song. The detection of the rhythmic base component of the music is sufficient to constitute a plainly audible sound.

- (3) The sound of any automobile, motorcycle or other vehicle so out of repair, so loaded or operated in such manner that it creates loud noises such as spinning or squealing tires, grating, grinding, rattling or other noise exceeding 85 decibels.
- (4) The sound of any mechanical equipment installed at a fixed location (Examples: fans, compressors, condensers, pumps, generators, etc.), if:
 - a. When the equipment is operating, noise from the equipment is discernable at a point outside the boundaries of the site where it is installed, and noise at that point is measured at a level of 70dB(A) or higher; and
 - b. Immediately before or after operation of the equipment, noise at the same point is measured at a level of 65dB(A) or lower.

All sound level measurements shall be made as provided in Section 54-43 of this article.

- (5) The sound of a discharge into the open air of the exhaust of any internal combustion motor or engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (6) The sound of any mechanical device operated by compressed air, except pneumatic drills, unless the noise thereby created is effectively muffled and reduced.
- (7) The sound produced by the erection, excavation, construction, or demolition of any building or structure, including the use of any necessary tools or equipment, conducted at any time other than during residential quiet hours, which activity produces a sound exceeding 85 dB(A) when measured from the property line of the residential property where the sound is being received. This decibel limit is not applicable when a current, valid permit has been obtained for the activities named and the sounds are being produced outside of residential quiet hours.
- (8) Any excessive noise made on any street adjacent to any school, institution of learning or court while the same is in session, or adjacent to any hospital at any time, which noise unreasonably interferes with the working of any such institution, provided conspicuous signs are displayed in such street indicating that the same is a school, hospital or court street.
- (9) Any loud and excessive noise resulting from the loading or unloading of any vehicle or container, or the opening or destruction of bales, boxes, crates or containers.
- (10) The sound of any bell, gong, whistle, siren, or other alarm or signaling device installed at a fixed location which is reasonably calculated to disturb a person of ordinary disposition if such person were in the vicinity thereof. Exceptions: This does not apply to:

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- a. An emergency alarm operated by the fire department or other governmental agency; or
 - b. An alarm system permitted and operated in compliance with applicable regulations, including automatic shutoff rules; see, e.g. chapter 26.
 - c. Any gong, bell or chime used in a religious observance or prayer.
- (11) The sound of any drum, loudspeaker or other instrument or device used to attract attention to any performance, show or sale of merchandise.
- (12) The sound made by loudspeakers or amplifiers on trucks or other vehicles.
- (13) Any sound exceeding 85 dB(A) when measured from the property line of the nearest residential property where the sound is being received that is produced by operating or permitting the operation of any lawn or garden tool, leaf blower, lawnmower, or any other similar device used for the maintenance or upkeep of the property on which it is operated at any time other than during residential quiet hours.
- (b.) In the event of any conflict between this section and Section 54-40 the provisions of this section shall control.

Sec. 54-42. - Affirmative defenses.

- (a) *Request to cease.* It shall be an affirmative defense in any prosecution under this article that a request to cease causing the noise in question was given neither to the person charged nor to any officer, agent, employee or representative of the person charged. All peace officers and other city enforcement personnel are hereby authorized to request that persons cease causing noises that are apparently in violation of this article. Nothing herein limits the right of others to make such requests.
- (b) *Urgent public projects.* It shall be an affirmative defense, in any prosecution under this article that the offending noise was:
 - (1) Necessary for a public project for which the public works director has certified, in writing, that expedited completion is urgently needed and in the public interest; and
 - (2) Made after 7:00 a.m. and before 9:00 p.m.
- (c) *Measured noise levels.* It shall be an affirmative defense, in any prosecution under this article, that a measured noise level was actually produced by some person or thing other than that alleged to have caused the noise.
- (d) *Registered outdoor events.* It shall be an affirmative defense, in any prosecution under this article, that the offending noise resulted from an outdoor concert or similar event that:
 - (1) Was registered at least 48 hours in advance with the chief of police;
 - (2) Did not last more than four hours, of which no more than two hours were during residential quiet hours; and
 - (3) Was otherwise conducted to avoid disturbance of persons within nearby dwellings.
- (e) *Speech or expression.* The affirmative defenses for speech or expression enumerated in V.T.C.A., Penal Code § 42.04 (prior order to move, disperse or remedy) shall also be available in any prosecutions for violations of this article.

Sec. 54-43. - Injunction as additional remedy.

As an additional remedy, the noise made by any activity, device, instrument, vehicle or machinery in violation of any provision hereof and which causes discomfort or annoyance to

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reasonable persons of normal sensitivity, or which endangers the comfort, repose, health or peace of residents in the area, shall be deemed, and is declared to be, a public nuisance and may be subject to abatement by a restraining order or injunction issued by a court of competent jurisdiction.

Sec. 54-44. - Sound level measurements.

Sound level measurements under this article shall be made in accordance with the following criteria:

- (1) Measurements must be made with a type 1 or type 2 calibrated sound level meters using the A-weighting scale and the slow meter response as specified by the American National Standards Institute (ANSI S1.4-1984/85A).
- (2) Noise levels shall be measured in decibels and A-weighted. The unit of measurement shall be designated a "dB(A)."
- (3) Meters shall be maintained in calibration and good working order.
- (4) Calibrations shall be employed which meet ANSI S1.40-1984 prior to and immediately after every sampling of sound.
- (5) Measurements recorded shall be taken so as to provide a proper representation of the sound being measured.
- (6) 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.

Agenda Item #5



Zoning & Planning Commission

Municipal Building 3800 University Blvd

Meeting Minutes

August 8, 2019

MEMBERS PRESENT: Richard Wilson, John Cutrer, Michael McEnany and Mimi Tsai

MEMBERS ABSENT: Mac Jensen, Pete Johnston and Brian Brantley

STAFF PRESENT: Gerardo Barrera, Interim Public Works Director, City Attorney, Alan Petrov, Debbie Scarcella, City Planner, and Josie M. Hayes, Administrative Coordinator

GUEST: Clifford Moy, Diane Moy and Larkin Matthews

1. **Notices, Rules, Etc.** Richard Wilson; Presiding Officer, called the meeting to order at 6:15 pm. Richard Wilson asked staff to confirm that appropriate notices were given. Josie Hayes stated notices were posted per state and local laws.
2. **Rules of Procedure.** The ZPC discussed and reviewed the proposed amendments to the Commission's Rules of Procedure. Richard Wilson made a motion to approve the changes. Seconded by Mimi Tsai. **AYES:** Richard Wilson, John Cutrer, Michael McEnany and Mimi Tsai. **NOES:** None. **Motion carried.**
3. **Front Porches and Balconies.** The ZPC considered modifications to the front porch and balconies proposal since the council meeting in July. There was some additional language added to clarify how to measure the height of permissible railings above the ceiling of a porch, and to clarify the definitions of "porch" and "balcony". Richard Wilson made a motion to forward a revised final report to City Council for its consideration. Seconded by Mimi Tsai. **AYES:** Richard Wilson, John Cutrer, Michael McEnany and Mimi Tsai. **NOES:** None. **Motion carried.**
4. **Property Maintenance Regulations.** There was general discussion regarding from ZPC, staff and residents length of time for a condition to be present before it is considered a violation and discussion regarding intrusive vs. invasive plants. Staff was directed to prepare an updated draft of the regulations.
5. **Noise Regulations.** There was general discussion regarding the construction noise section and the lawn equipment noise section. ZPC was given three handouts from the CDC website regarding dangerous noise levels that contained charts listing common noise generating activities and the average decibel rating for the noise. There were several





The City of West University Place

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comments from the public in attendance and some discussion regarding minor changes to the proposal. Staff was directed to prepare an updated draft of the regulations.

6. **Subdivision Regulations.** Staff gave an overview and highlighted some of the changes to Chapter 74. The consultant thought that reorganizing the chapter was a good idea with the end result being a more unified development code that could be easily amended and added to in time. Several charts with time frames and hearing/noticing requirements were developed and added. Cross references to applicable code sections in other chapters of the Code of Ordinances were inserted in order to help the public navigate and find regulations that pertain to their projects. Processes and responsibilities were also spelled out. The ZPC asked staff to present in full at the next available ZPC meeting.
7. **Minutes.** The commission reviewed the minutes of the meetings held on June 13, 2019. Mimi Tsai made a motion to approve the minutes. Second by John Cutrer. **AYES:** Richard Wilson, John Cutrer, Michael McEnany and Mimi Tsai. **NOES:** None. **Motion carried.**

[Adjournment]

Michael McEnany made a motion to adjourn. Second by John Cutrer. **Motion carried.** Meeting adjourned at 7:41 p.m.

PASSED THIS _____ DAY OF _____, 2019.

Presiding Officer

ATTEST: _____
Ms. Josie M. Hayes, Administrative Coordinator

