ORDINANCE #377

AN ORDINANCE ADDING CHAPTER 8, NUISANCES, ARTICLE 7 NOISE AND SOUND LEVEL REGULATIONS, ADOPTING PROVISIONS RELATING TO NOISE AND SOUND LEVEL REGULATION CONTROL IN THE CITY LIMITS OF THE CITY OF CLAUDE; BEING DEFINITIONS, GENERAL PROHIBITIONS, NOISY VEHICLES, AMPLIFIED SOUND, NOISY ANIMALS AND BIRDS, MAXIMUM PERMISSIBLE SOUND LEVELS, METHOD OF SOUND MEASUREMENT, PERMIT REQUIRED FOR USE OF OUTDOOR SOUND AMPLIFICATION EQUIPMENT, DEFENSES AND PENALTY; ESTABLISHING AN EFFECTIVE DATE; REPEALING ALL INCONSISTENT PROVISIONS AND PROVIDING FOR PARTIAL INVALIDITY.

WHEREAS, the City Council of the City of Claude has now determined that there is a need for establishing a comprehensive level of regulations for the emission of noise and sound levels, to help in protecting the users of property who are in close proximity to others who are creating noise or an excessive level of sound from the harmful effects and inconvenience of such sounds and to help promote peacefulness within the City; and

WHEREAS, the City Council of the City of Claude has found that the following regulations will promote the health, safety and welfare of the citizens and persons within the City; and

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

SECTION I.

CHAPTER 8 NUISANCES

ARTICLE 7 NOISE AND SOUND LEVEL REGULATION

Sec. 8.71.001. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

(a) *Daytime hours* shall mean the hours from 7:00 a.m. on one day and 10:00 p.m. the same day for residential properties or areas and 6:00 a.m. on one day and midnight on the same day for nonresidential properties or areas.

(b) *dB(A)* shall mean the intensity of a sound expressed in decibels.

(c) Emergency shall mean any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss that demands immediate action.

(d) *Emergency work* shall mean any work performed for the purpose of (i) preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, (ii) restoring property to a safe condition following a fire, accident, or natural disaster, (iii) protecting persons or property from exposure to danger, or (iv) restoring public utilities.

(e) Nighttime hours shall mean the hours between 10:01 p.m. on one day and 6:59 a.m. the following day for residential properties or areas and 12:01 a.m. and 5:59 a.m. the same day for nonresidential properties or areas.

(f) Nonresidential property/areas shall mean any real property that is not included in the definition of residential property as defined in this section. Without limitation, the term includes properties that have been zoned other than as residential property, and properties that are devoted to public purposes, such as public parks.

(g) Plainly audible means any sound that can be detected by a person using his or her unaided hearing faculties. For 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 name of the song, specific words or the artist performing it. The detection of the rhythmic bass component of the music is sufficient to constitute a plainly audible sound.

(h) Property line shall mean, 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 shall mean 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.

(i) Residential property/areas shall mean any real property where a residence is located.

(j) Streets shall be defined as being in the same category as the surrounding property. In the case of residential properties/areas which are across the street from nonresidential properties/areas, the street shall be considered to be in a residential area.

Sec. 8.71.002. General prohibitions.

(a) It shall be unlawful for any person to make, continue, or cause 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 properties/areas as defined above; whether the noise is recurrent, intermittent, or constant; the volume and intensity; 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) It shall be unlawful for any person to make, assist in making, permit, continue, cause to be made or continued, or permit the continuance of any sound that either exceeds the maximum permitted sound levels specified in Section 8.71.006 of this Code or, for purposes of sections 8.71.003, 8.71.004, and 8.71.005 of this Code, 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.

(d) This ordinance shall not apply to any public utility or public works.

Sec. 8.71.003. Noisy vehicles generally.

(a) The use of any motor vehicle so out of repair or so extra loaded, that it creates any loud and unreasonable or unusual, (that is, not standard equipment for the type vehicle, or which violates state of Texas regulations for equipment or emissions), grating, grinding, rattling, or any other loud and unreasonable sound is hereby prohibited and declared to be unlawful.

(b) No person shall operate an engine of any motor vehicle as defined by the Texas Transportation Code so as to "brake" or slow the same through the use of gears (commonly known as "jake braking") or by any other method which produces any noise in addition to the normal operating engine noise.

(c) No person shall operate or allow an engine of any sort of motor vehicle, except emergency equipment or vehicles then located at a permitted public event or parade, to idle for more than one (1) hour.

Sec. 8.71.004. Amplified sound.

(a) It shall be unlawful for any person to make, assist in making, permit, continue, cause to be made or continued, or permit 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, mobile phone, or

any other sound source, when operated: (i) in such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants, or (ii) 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. The operation of any such sound amplifier in such a manner as to be plainly audible at a distance of 50 feet or more 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 or more 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 (i) 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 (ii) the use is in compliance with all other provisions of this article.

Sec. 8.71.005. Noisy animals and birds.

(a) The keeping of any 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 is hereby prohibited and declared to be unlawful as a sound nuisance in violation of this article, regardless of whether the sound so created by said animal or bird is within the permissible levels specified in Section 8.71.006 of this Code.

(b) In any prosecution for a violation of this Section 8.71.005, the fact that any loud animal noise which disturbed any person and which occurs in residential areas either:

(1) during nighttime hours; or

(2) when none of the residents who reside at the place where the animal or bird is being kept are at home:

shall create a rebuttable presumption that such noise was in violation of this article.

(c) In any prosecution for a violation of this Section 8.71.005, the fact that any animal or bird has been allowed or permitted to persistently and chronically violate this section, as demonstrated by the issuance of two or more citations and or the receipt of two or more complaints from more than one household within a

two month period, shall create a rebuttable presumption that such noise was in violation of this article.

Sec. 8.71.006. 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 beyond the the property on which the sound is being generated that when measured as provided in Section 8.71.007 of this Code exceeds 85 dB(A) during daytime hours and 70 dB(A) during nighttime hours for the respective areas described above.

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

(c) Regardless of the measurable dB(A) level established above and measured as provided in Section 8.71.007, below, 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 experience physically detectable sound, vibrations or resonance at a distance of fifty (50') feet from the source of the sound (measured as set out below) 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.

Sec. 8.71.007. 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 Standards Association. 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. Traffic, aircraft, and other transportation noise shall not be considered in taking measurements except where such background noise interferes with the noise being measured and cannot reasonably be distinguished from the primary noise. Measurements of sound generated shall be taken from the curb line of the nearest public street to the property where the sound is generated and taken toward the source of the sound. In the event that there is not at least fifty (50') feet of distance from the building in which sound is being generated and from which sound is being measured, then measurements shall be taken from the street curb line opposite the said building of the nearest public street to the property where the sound is generated.

Sec. 8.71.008. 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 8.71.006, without first obtaining a permit to do so. No permit is required for any use not exceeding the said permissible levels. 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 city secretary.
2. Requires payment of a $10.00 fee for the administrative costs of issuing the permit or a sworn statement of inability to pay the fee.
3. Is valid for any requested period between the hours of 8:00 a.m. and 10:00 p.m. in residential areas or between 7 a.m. and midnight in non-residential areas.
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 specify the maximum sound level permitted.

(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 address and a description of the location where the sound equipment will be used.
5. A description of the type of sound amplifying equipment to be used.

The permit hereby required is not required for the purpose of regulating speech which is protected speech or to conflict with any law of any superior governmental authority. Any regulation hereof that is in conflict with any such right or authority is hereby declared to be inoperative and severable from the other regulations herein.

Sec. 8.71.009. Defenses.

The following defenses shall apply to any offense established in this article, and the same must be specifically plead by anyone charged with a violation:

(a) The emission of any sound was for alerting persons to the existence of an emergency, danger, or attempted crime, or was produced pursuant to any safety rule or regulation of any governmental entity or agency.

(b) The sound was produced by an authorized emergency vehicle.

(c) The sound was produced by emergency work.

(d) The sound was generated:

1. At a lawfully scheduled stadium event;
2. By a parade and spectators and participants on the parade route during a lawful parade;
3. By spectators and participants at lawfully scheduled amphitheater event;
4. 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;
5. By a pyrotechnic display that was inspected and approved by the fire marshal; or
6. By spectators and participants of any outdoor event, fun run, race, festival, fiesta, or concert that was sponsored or cosponsored by the city and in full compliance with a permit issued by the city.

(e) 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, which activity did not produce a sound exceeding 85 dB(A) when measured from the property line of the residential property where the sound is being received.

(f) The sound was produced by aircraft, in flight or in operation at an airport, or railroad equipment in operation on railroad rights-of-way.

(g) 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 9:00 p.m. when the sound is being produced for the maintenance or upkeep of the property on which it was operated.

(h) The sound was generated as authorized under the terms of a permit issued under Section 8.71.008 of this Code.

(i) The sound was produced by church bells or church chimes when used as part of a religious observance or service during daytime hours for the zone in which the church is located.

(j) 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, band and school entertainment practice or events.

Sec.8.71.010. Penalty.

(a) Any person who violates any provision of this article is guilty of an offense and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars ($500.00). Each hour or portion thereof in which any violation shall occur shall constitute a separate offense.

(b) Enforcement hereunder shall not require the pleading or proving of any culpable mental state.

SECTION II.

Any provision of any prior ordinance of the City of Claude, Texas, whether codified or uncodified, which is in conflict with any provision of this Ordinance is hereby repealed to the extent of the conflict; however, all other provisions of the ordinances of the City, whether codified or uncodified, which are not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

SECTION III.

It is the intent of the City Council that each word, paragraph, sentence, subdivision, clause, phrase or section of this Ordinance be deemed severable, and should such word, paragraph, sentence, subdivision, clause, phrase or section be declared invalid or unconstitutional for any reason, such declaration of invalidity or unconstitutionality shall not be construed to affect the validity of those provisions of this Ordinance left standing, or the validity of any other ordinances of the City of Claude.

SECTION IV.

The remainder of the City of Claude Code of Ordinances remains in full force and effect, save as amended herein.

SECTION V.

This Ordinance shall take effect and shall be in full force from and after its adoption and publication as provided by law.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Claude, Texas, this the ____ day of _____, 2024.

CITY OF CLAUDE, TEXAS

Mayor

ATTEST:

City Secretary