The City of West University Place
A Neighborhood City

ZPC Meeting Agenda

Notice is hereby given of a **regular meeting of the Zoning and Planning Commission** to be held via teleconference on Wednesday, June 17, 2020 beginning at **6:15 p.m.** in the **Municipal Building** located at 3800 University Blvd., West University Place, Texas.

Due to the COVID 19 Disaster and CDC'S recommendation regarding social distancing measures, the public will not be allowed to by physically present at this meeting. Zoning and Planning Commission will be meeting via teleconference and will be audible to members of the public and allow for two-way communications for those desiring to participate. To attend the meeting via telephonic means, please use the following toll-free number: 1-844-648-1102, **Meeting ID: 567-704-580** or follow link to https://www.join.me/westumeeting

Any person interested in speaking on any item on the agenda must submit his/her request via email to the Building Official at **cchew@westutx.gov.** The request must include the speaker's name, address, the phone number that will be for the call (in order to identify you) and the agenda item number and **must** be received prior to the posted time of the meeting.

The agenda packet is accessible to the public on the City's website. After the meeting, a recording of this meeting will be made available to the public.

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

1. **Notices, Rules, Etc.** Matters relating to notices, introductions, rules, meeting procedures and updates.
2. **Public Comments.**
   This is an opportunity for citizens to speak relating to agenda items. The speaker can either speak at this time or defer his/her comments until such time the item is discussed. Speakers are advised that comments cannot be received on matters which are the subject of a public hearing. Public comments must be kept relevant to the subject before the Board. The presiding officer shall rule on the relevance of comments. Persons making irrelevant, personal, impertinent, or slanderous remarks may be barred by the presiding officer from further comment before the Board during the meeting. Speakers must limit their presentations to three minutes each.
3. **Lighting Regulations.** Matters related to lighting regulations for properties in the City.
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 May 14, 2020.

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 June 17, 2020 was posted on the Municipal Building bulletin board on or before June 12, 2020 at 6:15 o'clock p.m.

Clay Chew

Clay Chew, Building Official, cchew@westutx.gov, 713-662-5830

Agenda Item #3

City of West University Place
Planning and Zoning Commission Meeting

DATE: June 11, 2020

Agenda Topic: Outdoor Lighting Ordinance

SUMMARY: The proposed Outdoor Lighting Ordinance was amended based on the comments from the May 14 2020 Zoning and Planning Commission Meeting and the May 18 2020 City Council Workshop. This Ordinance, if adopted, will allow enforcement of the provisions for lighting glare, within the City, without the utilization of a light meter.

SUMMARY OF PROPOSED LIGHTING AMENDMENTS:

1. **Glare definition:** Glare has been properly defined in a way that is understandable and enforceable. This definition of glare is from the Illuminating Engineering Society of North America.

   "Glare means the sensation produced by luminances within the visual field that are sufficiently greater than the luminance to which the eyes are adapted to cause annoyance, discomfort, or loss in visual performance or visibility."

2. **Outdoor Lighting definition:** The definition of outdoor lighting has been added.

   "Outdoor Lighting means lighting equipment installed within the property line and outside the building envelope, whether attached to poles, building structures, the earth, or any other location, and any associated lighting control equipment."

3. **City of West University Light:** The City of West University is exempted from the Outdoor Lighting Ordinance.

4. **Christmas and Holiday Lighting:** The holiday lighting definitions were modified to mention LED lighting and allow for an exemption from the holiday projectors.

   "Seasonal decorations using typical, unshielded, low-wattage, incandescent lamps or light-emitting diodes (LED) or holiday light projectors shall be permitted from November 10th through January 30th."

5. **Existing Lighting and this proposed ordinance:** If existing lighting is not violation of this article, meaning that it does not create glare onto other properties, then it conforms to this Ordinance. As with most Ordinances, it is complaint-based and will have to receive a code enforcement complaint. Often, these cases are resolved by modifying the direction of the lighting.

6. **Security Lighting:** Security lighting has been added as an exemption to this Ordinance if it

City of West University Place
Planning and Zoning Commission Meeting

does not cause light glare onto adjacent properties.

"Residential security lighting, such as motion activated flood lights are permissible under the following condition: lighting must be installed or shielded in a way that does not cause light glare onto other properties, in accordance with Section 54-217."

7. **Photometric Requests:** During the permitting process, the Building Official can request data or information, such as a photometric study, to prove conformance to Section [A] 105.3 of the International Building Code~~,~~ and R105.3 of the International Residential Code.

Enforcement: The enforcement of this Ordinance is typically performed in this manner:

1. **Typical Enforcement of Complaints**
    a. A complaint is received by the City of West University Place.
        i. City staff is assigned case (such as the Building Official, Code Enforcement Officer, or Peace Officers).
            1. Staff follows up with complaint.
                a. Photographs or evidence provided by affected.
                b. Site Visit.
            2. Warning letter or notice sent to property owner of lighting glare.
                a. Lighting complaint is often resolved at this stage.
            3. Citation Issued
                a. A maximum $500.00 fine per day, per violation.
            4. Court
                a. Evidence is provided.
                b. Applicant may appeal and provide evidence.
                c. Fine may be reduced.

Staff Recommendation: Consideration for the proposed Lighting Ordinance.

Attached:
1) Proposed Lighting Ordinance
2) PowerPoint Violations versus not a Violation.
3) May 18, 2020 City Council Workshop Summary – Lighting Ordinance Excerpt

Chapter 54 - OFFENSES AND MISCELLANEOUS PROVISIONS

Article VIII. Outdoor Lighting Regulations

Sec. 54-215 – Purpose.

The purpose of this article is to provide regulations for outdoor lighting that will minimize adverse offsite impacts of outdoor lighting such as light glare, and light trespass.

Sec. 54-216 - Definitions.

The following words, terms, and phrases, when used in this article, shall have the following meanings:

Glare means the sensation produced by luminances within the visual field, that are sufficiently greater than the luminance to which the eyes are adapted to cause annoyance, discomfort, or loss in visual performance or visibility.

Outdoor lighting means lighting equipment installed within the property line and outside the building envelope, whether attached to poles, building structures, the earth, or any other location, and any associated lighting control equipment.

Sec. 54-217. – Violation Declared.

(a) It shall be unlawful for any person to cause or permit to be energized, on property owned or under his or her possession or control, any outdoor lighting which projects a glare directly upon any lot, tract, parcel of land, or other private property other than that property upon which such outdoor lighting is situated.

(b) The use of laser source light, searchlights, flashing and/or rotating lights or any similar high intensity light for outdoor advertising or entertainment, when projected above the horizontal, is prohibited, unless as authorized by this article.

Sec. 54-218. – Enforcement.

(a) Upon receipt of a complaint from any citizen, or upon the initiative of any employee of the City of West University Place, Texas, a compliance inspection shall be conducted by the City Building Official, code enforcement officers, peace officer, or other representatives designated by the City Manager.

Sec. 54-219. – Exceptions.

(a) The provisions of this article shall not apply to:

1. Lighting operated for emergency lighting used by police, fire emergency, utility work personnel, or medical personnel, or at their direction.

2. Any City-owned and operated lighting.

3. Seasonal decorations using typical, unshielded, low-wattage, incandescent lamps or light-emitting diodes (LED) or holiday light projectors shall be permitted from November 10th through January 30th.

4. Lighting that illuminates the United States and State of Texas flags. All other outdoor lighted flags, such as, but not limited to decorative and commercial flags shall conform to these provisions.

(b) Residential security lighting, such as motion activated flood lights are permissible under the following condition: lighting must be installed or shielded in a way that does not cause light glare onto other properties, in accordance with Section 54-217.

Sec. 54-220. – Penalty

Any person violating any provision of this article may be charged with a misdemeanor and if convicted, may be subject to a fine of not more than $500.00. Each occurrence of any such violation of this article shall constitute a separate offense. Each day on which any such violation of this article occurs shall constitute a separate offense.

Violation Examples

Image Sources: 1) https://www.gallinaswatershed.org/what-you-can-do/light-pollution.html

Not a violation

Image Sources: https://www.burkholderlandscape.com/outdoor-residential-lighting/ 2) https://www.topbulb.com/blog/glare-common-outdoor-lighting-design-flaw/

May 18, 2020

City Council Workshop Summary:

Lighting Ordinance Discussion:

General approach of the ordinance: The basic approach is that you can't shine a light onto your neighbor's property. This proposed ordinance is written not to be a huge burden on residents while providing protection from the worst offenders.

Removed references to "Light Trespass": This reference was removed as it was previously only included for Residential Security Lighting, and has since been removed.

Removed any references to "Outdoor Athletic Facility": This ordinance was modified to remove all references to outdoor athletic facilities as this lighting is controlled under in the Parks and Recreation Chapter of the City's Ordinances (Chapter 58).

Council Feedback:

Question 1: How is glare and different than light trespass?

Answer: Glare is a species of light trespass, and there will be some light trespass on other residential properties. Glare is the most offensive as it shines the focal point of a light at a property.

Question 2: How will this ordinance will be enforced?

Answer: This ordinance is designed so that no light meter is required for enforcement of this Ordinance. A violation with glare will be easily identified as observed from the adjacent property.

Question 3: The persons definition contains is broad enough to include corporations?

Answer: Yes, the definition of person is broad and does include corporations.

Question 4: Is there a standard definition for residential Security Lighting?

Answer: There is no definition for residential security lighting provided, but it does provide motion activated lighting as an example. It can be argued that almost all lighting is security lighting.

Agenda Item #4

City of West University Place
Planning and Zoning Commission Meeting

DATE: June 11, 2020

Agenda Topic: Noise Ordinance Amendment

SUMMARY: The proposed modifications to the noise ordinance have been amended based on the comments from the previous Zoning and Planning Commission Meetings, and the Council Workshop. This proposed ordinance has two options for consideration for the ZPC.

SUMMARY OF PROPOSED REVISIONS: This is the summary of changes that occurred since the ZPC the last meeting:

1. Staff has removed nuisance language from the code language, and has instead added "in violation of this article" due to a recent Texas Supreme Court Case that requires injury for a nuisance case (Crosstex North Texas Pipeline, LP v Gariner-2016).

2. Staff has recommended that the Zoning and Planning Commission consider allowing the 70 dB(A) level for leaf blowers, as it provides substantially more gas-powered options, while still limiting the loudest leaf blowers.

TWO OPTIONS FOR CONSIDERATION:

Option A: This option has two parts, the first part is a general lawn maintenance noise standard, and the second is a defined leaf blower noise limitation. General lawn maintenance equipment has an 85 dB(A) limitation at 25 feet, which will allow work to be performed but limit the loudest equipment. The noise heard from leaf blowers is the most complained lawn equipment noise. In this proposal, the regulation of leaf blowers limits the sound at either 65 dB(A) or 70 dB(A) measured at 50 feet. Upon additional research, staff recommends that the 70 dB(A) standard be adopted, as more gas blowers are permitted from residents and commercial companies (See Home Depot Survey). The goal of these provisions is to remove the loudest lawn equipment, while allowing the work to be performed. When there is equipment that can operate at less than the residential quiet hours limitation of 58 dB(A), then this equipment would be allowed during residential quiet hours.

1. **Other lawn maintenance equipment is limited to a maximum of 85 dB(A) measured at 25 feet:** Similar to the regulation leaf blowers, a similar standard of 85 dB(A) at 25 feet is commonly utilized for compliance with sound ordinances and has been recommended with this edition of the proposed Ordinance.

2. **Leaf blowers limited to 65 dB(A) or 70 dB(A) measured at 50 feet:** There are many resources for finding appropriate models leaf blowers for a dense residential community such as West University Place. A certification sticker for leaf blowers in compliance with the 65 dB(a) or 70 dB(a)standard is located on the equipment. This can be easily utilized by staff to determine compliance with this proposed Ordinance. Additionally, if a leaf blower does not have the certification sticker, the manufacturers specifications can be shown to prove compliance with this subsection.

City of West University Place
Planning and Zoning Commission Meeting

a. This required could be adjusted to be 70 dB(A) at 50 feet, which would allow more leaf blower models in the City. As technology improves, this noise level could be adjusted. At the 70 dB(A) level, roughly 62% of leaf blowers satisfy this requirement that are for sale at the Pin Oaks Home Depot, and adjacent stores (See attached Home Depot Survey).

Option B: The second option for consideration is to modify the quiet hours, and allow lawn maintenance with no noise limitation outside of residential quiet hours. This option is the easiest to enforce as there are scheduled times for when lawn maintenance can be performed.

3. **Proposed Residential Quiet Hours:** This option will define the hours when many people are sleeping or engaged in quiet activities at home, to be designated as follows:

   i. Any weekday (Monday through Friday, except holidays mentioned below) before 7:00 a.m. or after 7:00 p.m.

   ii. Any Saturday (except the holidays mentioned below) before 8:00 a.m. or after 5:00 p.m.

   iii. Any Sunday, New Year's Day, Thanksgiving Day, Christmas Day, and whenever corresponding Friday or Monday on which the City observes that holiday before 12:00 noon or after 5:00 p.m.

   iv. In order to work outside normal work hours, must be approved by the City Manager or designee before any work outside of the normal hours is commenced.

SUMMARY OF PROPOSED AMENDMENTS FOR BOTH OPTIONS: The summary of proposed amendments is presented with general updates and two options for regulating tools and equipment utilized for maintenance of the property. These proposed changes are outlined below.

4. **General noise measurements:** This section has been modified to make sure that any sound meter measurements are at the adjacent property, unless as stipulated in the ordinance under Section 54-44. This adjacent property measure would not be utilized for lawn equipment, as there is either a certification sticker or manufactures information that will have to be shown or proved to confirm compliance.

5. **Urgent Public Projects:** This proposal eliminates the need for certified notice for urgent public works projects. These types of projects are typically an emergency, and notice requirement would make emergency repairs difficult. Public works projects that are planned in the future will follow the City's policies for notification of property owners.

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> **Sec. 54-42(b)** *Urgent public projects*. It shall be an affirmative defense, in any prosecution under this article that the offending noise was deemed a necessary repair by the Public Works Director for a public need.

Staff Recommendation: Consideration for the propose options for a revised noise ordinance.

Attached:

1) Proposed Noise Ordinance with both options
2) Proposed change in Quiet Hours
3) May 18, 2020 Workshop Summary for Noise Ordinance
4) Power Point with Option A Information
5) Home Depot Survey conducted on 6/6/2020

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS; AMENDING CHAPTER 54, NOISE, OF THE CODE OF ORDINANCES OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS, TO REVISE IN ITS ENTIRETY THE CRITERIA FOR NOISE AS A NUISANCE WITHIN THE CITY AND CONTAINING FINDINGS AND PROVISIONS RELATING TO THE SUBJECT.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS, THAT:

Section 1. Chapter 54, Article III of the Code of Ordinances, of the City of West University Place, Texas is amended by the repeal of the existing Article III, and the adoption of a new Article III, to read as set out in Appendix A, attached hereto. All other portions of Chapter 54 of the Code of Ordinances not specifically amended hereby remain in full force and effect.

Section 2. All ordinances and parts of ordinances in conflict with this Ordinance are repealed to the extent of the conflict only.

Section 3. If any word, phrase, clause, sentence, paragraph, section or other part of this Ordinance or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, neither the remainder of this Ordinance, nor the application of such word, phrase, clause, sentence, paragraph, section or other part of this Ordinance to any other persons or circumstances, shall be affected thereby.

Section 4.. The City Council officially finds, determines and declares that a sufficient written notice of the date, hour, place and subject of each meeting at which this Ordinance was discussed, considered or acted upon was given in the manner required by the Texas Open Meetings Act, as amended, and that each such meeting has been open to the public as required by law at all times during such discussion, consideration and action. The City Council ratifies, approves and confirms such notices and the contents and posting thereof.

Section 5. This Ordinance takes effect immediately upon its passage and adoption on second reading.

PASSED, APPROVED AND ADOPTED ON FIRST READING on the _____ day of_____, 2020.

Councilmembers Voting Aye:
Councilmembers Voting No:
Councilmembers Absent:

PASSED, APPROVED AND ADOPTED ON SECOND READING, AND SIGNED, on the_____day of_____, 2020.

Councilmembers Voting Aye:
Councilmembers Voting No:
Councilmembers Absent:

Attest:_____ **Signed:** _____
City Secretary (Seal) Mayor

Recommended: _____
City Manager

Approved as to legal form: _____
City Attorney

Appendix "A"

Amend Chapter 54, Article II-Noise in its entirety by substituting the following provisions:

ARTICLE II. - NOISE

Sec. 54-39. - Unreasonable noise prohibited.

Notwithstanding anything else in this Article, 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, or continue making, ~~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 sound level shall be measured at the property line of the property on which the sound is generated.~~

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.

(3) All sound level measurements shall be made as provided in Section 54-44 of this article, unless as otherwise stipulated in Section 54-41.

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

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 54-443 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 outside 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:

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.

Current proposal

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(13) The sound made by the use of tools or equipment, other than leaf blowers, for the maintenance of outside areas that exceeds 85 dB(A) measured at twenty-five (25) feet, outside residential quiet hours.

(14) The sound of any leaf blower operated in the City outside residential quiet hours that exceeds sixty-five [(65) or (70)] dB(A) from a distance of fifty (50) feet utilizing the American National Standard Institute Methodology (ANSI B175.2). Any leaf blower that bears that certification shall be presumed to comply with any noise level limit of this subsection provided it operates as the manufacturer designed. Any operator of a leaf blower without this certification shall be prepared to provide verification from the manufacturer confirming compliance with this subsection.

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Alternative proposal

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(13) The sound made by leafblowers, lawnmowers and other lawn maintenance equipment when operated during residential quiet hours.

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(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 deemed a necessary repair by the Public Works Director for a public need.

~~(1) Necessary for a public project for which the public works director has deemed urgently needed. 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 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, in violation of this article 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.

(7) At the property line of the building site where the noise is being generated.

(18) *Residential quiet hours* means those hours when many people are sleeping or engaged in quiet activities at home. They are hereby designated as follows:

Any weekday (Monday through Friday, except the holidays mentioned below)*:	Before 7:00 a.m. or after ~~8~~7:00 p.m.
Any Saturday (except the holidays mentioned below)*:	Before 8:00 a.m. or after ~~8~~5:00 p.m.
Any Sunday, New Year's Day, Thanksgiving Day, Christmas Day, and whenever corresponding Friday or Monday on which the city observes that holiday*:	Before 12:00 noon or after ~~8~~5:00 p.m.

* In order to work outside normal work hours, must be approved by the City Manager or his designee before any work outside of the normal hours is commenced.

May 18, 2020

City Council Workshop Summary

Noise Ordinance Discussion:

Regulation of Construction: Outside of quiet hours there are no noise limitations for permitted work, as a certain amount of noise is associated with construction. The board thought that construction is transitory and is what it is.

Change in quiet hours: This proposal also changes the quiet hours with one more quiet hour during week, and three more during the weekends (See Proposed Quiet Hours). During quiet hours all noise must satisfy the quiet hours dB(A) limitation. The changes proposed to quiet hours are generally supported by the Zoning and Planning Commission.

Proposed Quiet Hours:

Any weekday (Monday through Friday, except the holidays mentioned below)*:	Before 7:00 a.m. or after ~~8~~7:00 p.m.
Any Saturday (except the holidays mentioned below)*:	Before 8:00 a.m. or after ~~8~~5:00 p.m.
Any Sunday, New Year's Day, Thanksgiving Day, Christmas Day, and whenever corresponding Friday or Monday on which the city observes that holiday*:	Before 12:00 noon or after ~~8~~5:00 p.m.

* In order to work outside normal work hours, must be approved by the City Manager or his designee before any work outside of the normal hours is commenced.

Four Potential Approaches For Noise:

1. **Stay with the current ordinance**:
    a. Outside of quiet hours the sound levels are not regulated.
2. **Noise based standard outside of quiet hours**.
    a. At the City of Houston, the limitation is 85 decibels, but there was concern that this 85 dB(A) limitation is too low for certain types of work.
3. **Regulate the equipment instead of the noise:**
    a. **T**his is approach the proposed ordinance is utilizing. Enforcement is easier as there is either a sticker, and the manufactures specification that can be provided for compliance.

One of the arguments against an equipment-based standard is that landscapers may currently not have compliant equipment.

4. **Limit the use of lawn equipment to certain days of the week:**
    a. There can be certain days of lawn equipment usage such as when garbage is picked up. The drawback to this approach is that it takes away the flexibility of when work is performed.

Council Feedback:

Comment 1: There are 10 leaf blowers available at the 65 dB(A) limitation at the Pin Oaks Home Depot. At 70 dB(A) there are 16 available leaf blowers.

Comment 2: Suggest that we give contractors some period of time, maybe six (6) months to have enough notice to conform to the new ordinance for leaf blowers.

Questions:

Question 1: Where did the 65 dB(A) standard come from?

Answer: The 65 dB(A) Standard is used in several cities, such as Portland Oregon. Although, the City of Portland does allow for 70 dB(A) leaf blowers during the rainy season to provide more power to move wet leaves.

Question 2: Is there any concern that power washers will be out of compliance with this article?

Answer: The 85 dB(A) at 25 feet standard should provide enough noise for louder equipment such as power washers.

Question 3: How was this ordinance be enforced?

Answer: This ordinance would be enforced by Code Enforcement Officer or a Police Officer. If a call comes in normal business hours the code enforcement offer would enforce. A list of compliant equipment machines that can be utilized could be compiled.

Question 4: Measuring equipment at the property line?

Answer: Not needed for most equipment as a sticker identifies compliance or the manufacturers specifications can be provided to check for compliance for leaf blowers.

Question 5: There is an issue with utilizing he public nuisance language of this ordinance, as the Texas Supreme Court requires an injury.

Answer: The City's Attorney will look into this matter.

Guidance:

Council generally more in favor increase in quiet hours.

Council generally in favor of limitations on equipment, including leaf blowers. Some consideration should be given for the 70 dB(A) limitation for leaf blowers.

Leaf Blowers:

1) 65 dB(A) or 70 dB(A) at 50 Feet PER ANSI B175.2.

Sticker on device or approved list (Consumer Reports).

A substantial of leaf blowers satisfy this standard.

2) Other outdoor equipment

- Lawn mowers
- Edgers
- Etc.

<u>Outside areas are limited to 85 dB(A) measured at twenty-five (25) feet, other than during residential quiet hours</u>

Home Depot Leaf Blower dB(A) Rating Survey

A survey was conducted of available leaf blowers for sale at Home Depot at the Pin Oak and the nearby stores of Westheimer, Westbury Square, Spring Valley, and Beltway 8 was performed (See Exhibit A). This survey has found that there are 104 available leaf blowers at or below the 65 dB(A), of which only four gas leaf blowers satisfy the proposed requirement. When looking at 70 dB(A) or below, there are 11 more gas powered blowers available for purchase. Additionally, at 70 dB(A) there are two gas leaf blowers on the shelf at nearby Home Depot's available for purchase. A total of 40% of leaf blowers for sale at Home Depot satisfy the 65 dB(A) requirement and 62% satisfy the 70 dB(A) requirement. Allowing 70 dB(A) would allow more options for residents and contractors.

Exhibit A: Noise Levels and Available Leaf Blowers

Home Depot - Leaf Blowers Survey						
Db(A) Rated Level	**Electric**	**Gas**	**Total**	**Available In store or nearby stores**	**Electric**	**Gas**
35 to 50	11	0	11	0	0	0
Greater than 50 to 65	89	4	93	11	11	0
Greater than 65 to 70	45	11	56	8	6	2
Greater than 70 to 80	12	33	45	6	3	3
Greater than 80 to 90	12	2	1	1	1	0
Greater than 90 to 100	36	7	43	1	1	0
Greater than 100	9	2	11	0	0	0
Total	**214**	**59**	**260**			

Exhibit B: Available Leaf Blowers as a percentage at Home Depot.

Summary of Avaible Leaf Blowers

	Electric	Gas	Total	Percentage of Leaf Blowers in compliance
Total 65 dB(a) and below	100	4	104	40%
Total 70 dB(a) and below	145	15	160	62%

* Home depot website as reviewed on 6/6/2020

To All ZPC Members

Ref: Noise Ordinance

At your last meeting in May the majority's opinion was that there should be no changes to noise levels currently permitted under Chapter 54 of the existing ordinances. I fully support your position for the following reasons:

1. WestU's existing levels are the same as those for the City of Houston and conform to those of many other communities; your Chairman, Richard Wilson, so stated during his presentation to the City Council's Workshop on May 18th.
2. The proposed change for leaf blowers would create an inconsistency in standards permitted for different types of property care equipment; for instance lawn mowers versus leaf blowers versus power washers versus chainsaws. If the "noise level" is the critical issue then should we not establish a common, **realistic** standard applicable to all types of equipment which then permits the efficient use of such equipment and also aligns with neighboring cities/townships where our contractors also work.
3. Garden maintenance by most contractors is usually completed quickly so the noise created is normally for short periods ("transient").
4. Any noise revisions would potentially place additional costs for new, conforming equipment on contractors, especially smaller outfits, which could lead to higher prices and/or less competition if some providers withdraw.
5. Enforcement of the proposed ordinance will be difficult especially if different noise limits are permitted for various yard equipment and may take City's Code Enforcer Officer away from more important issues. Outside the Code Enforcement Officer's normal hours, the police would be required to enforce this ordinance per City Manager. Do we really want our police force to be monitoring noise rather than deterring real crime?
6. WestU is a small, friendly and tight-knit community. Enforcement of the proposed ordinance would mostly be dependent on a resident's complaint which may lead to friction between neighbors.
7. Similar proposals have already been considered and rejected by both the Current and Previous Councils.

Two of the benefits of the City's various Commissions are that the members are usually long-term residents with broad knowledge and experience of WestU life and they are able to provide an independent assessment and recommendation for any proposed new or amended ordinances. In May you felt that no changes to the existing permitted noise levels in the ordinance were warranted for various and good reasons. I see no new information that would cause you to change your previous position so I urge you to maintain to your May decision on this issue and approve Option B as set out in the June agenda.

Sincerely yours

Eddie Matthews

5906 Fordham Street (Tel: 832 668 5250)

To West University Place ZPC Members June 9, 2020

Having participated in the ZPC Workshop on May 14th, I was under the impression that there was a consensus of the majority of members that the current noise ordinance should be left as is, primarily due to the inability to enforce the proposed changes to the Noise ordinance. Having attended the City Council Workshop and Meeting on May 18th, I was very disappointed that the recommendation of the ZPC majority from the workshop seemed to have been summarily dismissed by Council without even hearing any mitigating factors, pushing for the ZPC to go back and reconsider the same proposed modifications again. Even though I spoke at the May 14th ZPC Workshop, I am writing to hopefully emphasize what I feel are shortcomings in the proposed Noise Ordinance that I feel must be considered to ensure that the noise ordinance be effective, uniform and fair.

- There is no consistent standard across yard equipment with mowers at 85dB and blowers at 65dB, and completely ignoring power washers, chainsaws, tree chippers and other tools. How can 85dB for mowers be OK, but not acceptable for leaf blowers?
- How can you establish regulations for 3rd parties on residential properties, but exclude commercial and government maintenance authorized up to 105dB, possibly right across the street from residences?
- How can you pass an ordinance that will negatively impact 99% of the current 3rd party yard service organizations? Even with a short phase in period, these businesses (<u>especially</u> small businesses with 1 or 2 crews) will be significantly impacted financially just for the privilege of working in West U. Some larger firms have 50+ leaf blowers you would force them to replace.
- How can you expect 3rd party yard services to operate a different set of equipment for West U? In speaking to some of the 3rd party contractors, they would continue to use their more powerful leaf blowers in surrounding areas such as the City of Houston (85dB limit) and Bellaire (no specific limits, just quiet hours).
- In conversations with commercial yard service organizations, it was discovered some utilize “governors” on their throttles, which means that a 74dB rated blower is being operated at 65db or less. Using a sticker to assess compliance, or even looking up the dB rating based on model number, while simplistic, is not always an accurate way to assess compliance.
- How can you pass a noise ordinance that clearly cannot be consistently and fairly enforced? This revision anticipates enforcement by complaint which is neither reasonable, consistent nor fair.

Proponents of the changes state that there is a 3rd party operating in West U whose equipment is all battery operated (cleanairlawncarehouston.com), and they are correct… However, besides inferior performance, those proponents fail to mention that the business had to spend significant dollars to mount solar panels on his truck in order to continually charge a bank of

batteries that otherwise would not allow him to operate his equipment for the number of hours needed to sustain a commercial yard business (average battery life is 30-45 minutes).

As mentioned in one of the recent meetings, proponents also state that there are a number of compliant 65dB rated blowers at Home Depot and Lowes, but fail to mention that none of which are viable for a commercial business. The blowing power of battery operated devices ranges between 25-50% less CFM or MPH or both resulting in increased time/effort to do the same work. (cubic ft/minute; miles/hr), not to mention battery life and charging in the field issues. Bottom line I have heard from yard services I spoke to is that battery operated equipment is not feasible for commercial operations who service large numbers of West U customers.

I too would like to see us get to a point where more quiet equipment can reasonably become the standard but we are not there yet. Build a plan that includes time for the technology to improve, the 3rd party vendors to prepare for the additional cost and the ability to amortize their current equipment investment over a reasonable time period, say 3 years.

Perry Nolen, 4203 Milton St
West University Place

Agenda Item #5

The City of West University Place
A Neighborhood City

Zoning & Planning Commission

Municipal Building 3800 University Blvd

Meeting Minutes

via teleconference due to the Coronavirus (COVID-19) health threat

May 14, 2020

MEMBERS PRESENT:	Richard Wilson, John Cutrer, Winfield Campbell, Sylvette Bobb and Bob Powell
MEMBERS ABSENT:	David Kuykendall and Brian Brantley
STAFF PRESENT:	City Attorney, Alan Petrov, Gerardo Barrera, Public Works Director, Clay Chew, Building Official, and Josie M. Hayes, Administrator Coordinator
GUEST PRESENT:	Eddie Matthews, Perry Nolen, Elizabeth Strelow, Paul Scheet, Aurelio Diaz and Kim King

1. **Notices, Rules, Etc.** Richard Wilson; Presiding Officer, called the meeting to order at 5:30 p.m. and asked commission members and staff to introduce themselves. Richard Wilson asked staff to confirm that appropriate notices were given. Josie Hayes stated notices were posted per state and local laws.

2. **Lighting Regulations.** Kevin Taylor and Evan Duvall with BBG Consultants reviewed the revisions from the previous meeting. After general discussion by the ZPC, there was consensus to making some additional minor corrections to the proposed lighting regulations. The ZPC members will seek input and direction from City Council during a scheduled workshop in June.

3. **Noise Regulations.** There were six residents who spoke in favor and against the proposed noise regulations. Some stating it would be too difficult to enforce, decibel level isn't reasonable or due to the cost of contractors having to purchase new equipment to meet the decibel requirements. Kevin Taylor and Evan Duvall with BBG Consultants summarized the revisions from the previous meeting. After a lengthy discussion by the ZPC, there was no consensus nor a vote on this topic. ZPC members will seek input and direction from City Council during a scheduled workshop in June.

4. **Minutes.** The commission reviewed the minutes of the meetings held on April 9, 2020. Richard Wilson a motion to approve the minutes as amended. Second by Winfield Campbell. **AYES:** Richard Wilson, John Cutrer, Winfield Campbell, Sylvette Bob and Bob Powell. **NOES:** None. **ABSTAIN:** None. **Motion carried.**

[Adjournment]

Richard Wilson made a motion to adjourn. Second by John Cutrer. **AYES:** Richard Wilson, John Cutrer, Winfield Campbell, Sylvette Bobb and Bob Powell. **NOES:** None. **ABSTAIN:** None. **Motion carried.** Meeting adjourned at 6:35 p.m.

PASSED THIS _____DAY OF _____, 2020.

_____
Presiding Officer

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