



ZPC Meeting Agenda

Notice is hereby given of a **regular meeting of the Zoning and Planning Commission to be held via teleconference** on Thursday, July 9, 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 be 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: 759-127-927** or follow link to <https://www.join.me/759127927>

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. **Noise Regulations.** Matters related to the general noise regulations regarding equipment, loudspeakers, construction activities, quiet hours, etc.
4. **Minutes.** Matters regarding approval of minutes from June 17, 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.





The City of West University Place

A Neighborhood City

I certify that the attached notice and agenda of items to be considered by the West University Place Zoning and Planning Commission on July 9, 2020 was posted on the Municipal Building bulletin board on or before July 6, 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 Zoning and Planning Commission Meeting

DATE: July 9, 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.

Recommended Option A – Residential Quiet Hours: During the June 11, 2020 ZPC Meeting, the Commission recommended the proposed change to the Residential Quiet Hours that allows lawn work outside of the revised quiet hours. Additionally, lawn work is possible during Residential Quiet Hours, as long as it satisfies the limitation of 58 dB(A). This change would make enforcement more difficult, as it would require a sound meter when a complaint is received during Residential Quiet Hours.

1. **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.

Option B – Decibel Limits: 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 eighty-five (85) dB(a) limitation at twenty-five (25') feet, which will allow work to be performed, but limit the loudest equipment. The noise heard from leaf blowers is the most complained about lawn equipment noise; in this proposal, the regulation of leaf blowers limits the sound at seventy (70) dB(a) measured at fifty (50') feet. The decibel limit for leaf blowers would come with a six (6) month delay to allow for implementation.

Discussion on work during quiet hours: This option has also been modified to allow for lawn work during quiet hours if the noise limitation of 58 dB(A) is satisfied, due to the ZPC discussion on June 11, 2020. This change would make enforcement more difficult, as it would require a sound meter when a complaint is received during Residential Quiet Hours.

Staff Recommendation: Provide a recommendation to City Council.

City of West University Place Zoning and Planning Commission Meeting

Attached:

- 1) Proposed Noise Ordinance with both options
- 2) Option A: Proposed Ordinance Clean Copy
- 3) Option A Proposed Change of Quiet Hours
- 4) Option B: Proposed Ordinance Clean Copy
- 5) Option B: 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. {Except as provided in the next sentence,} This Ordinance takes effect immediately upon its passage and adoption on second reading. {Section 54-41(a) (14)(b) shall go into effect six (6) months after the adoption of this Ordinance.}

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: _____
City Secretary (Seal)

Signed: _____
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, if produced:
 - a. During Residential Quiet Hours, unless the dB(A) limitation in Sec 54-40(1)(a) is satisfied, or the next sentence is applicable. If the sound is produced during Residential Quiet Hours at a time authorized in writing by the building official, a decibel limit of 85 dB(A) shall apply during the time period authorized by the Building Official.
 - b. Outside Residential Quiet Hours if it exceeds 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.

Option A – Quiet hours

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- (13) The sound made by leaf blowers, lawnmowers and other lawn and garden maintenance equipment when operated during Residential Quiet Hours, unless the dB(A) limitation in Sec 54-40(1)(a) is satisfied.

}

Option B – Decibel Limits

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- (13) The sound made by lawnmowers or other lawn and garden equipment excluding leaf blowers, if:
 - a. Operated during Residential Quiet Hours that exceeds the dB(A) limitation in Section 54-40(1)(a); or
 - b. Operated outside Residential Quiet Hours that exceeds 85 dB(A) measured at twenty-five (25) feet from such equipment.
- (14) The sound made by any leaf blower operated:
 - a. During Residential Quiet Hours that exceeds the dB(A) limitation in Section 54-40(1)(a);
 - b. Outside Residential Quiet Hours that exceeds seventy (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 deemed 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 provide verification from the manufacturer confirming compliance with this subsection.

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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~~ calibrated ~~on~~ annually in accordance with ANSI S1.40 1984 and good working order.
- (4) ~~Calibrations shall be employed which meet ANSI S1.40-1984 prior to and immediately after every sampling of sound.~~
- ~~(4)~~(5) Measurements recorded shall be taken so as to provide a proper representation of the sound being measured.
- ~~(5)~~(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.
- (6) At the property line of the building site where the noise is being generated, unless as otherwise stipulated in 54-41.

Option A

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: _____
City Secretary (Seal)

Signed: _____
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, 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.

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.
- (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, if produced:
 - a. During Residential Quiet Hours, unless the dB(A) limitation in Sec 54-40(1)(a) is satisfied, or the next sentence is applicable. If the sound is produced during Residential Quiet Hours at a time authorized in writing by the building official, a decibel limit of 85 dB(A) shall apply during the time period authorized by the Building Official.
 - b. Outside Residential Quiet Hours if it exceeds 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.
- (13) The sound made by leaf blowers, lawnmowers and other lawn and garden maintenance equipment when operated during Residential Quiet Hours, unless the dB(A) limitation in Sec 54-40(1)(a) is satisfied.

(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.
- (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 calibrated annually in accordance with ANSI S1.40 1984.
- (4) Measurements recorded shall be taken so as to provide a proper representation of the sound being measured.
- (5) 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.
- (6) At the property line of the building site where the noise is being generated, unless as otherwise stipulated in 54-41.

(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.

Option B

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. Except as provided in the next sentence, this Ordinance takes effect immediately upon its passage and adoption on second reading. Section 54-41(a)(14)(b) shall go into effect six (6) months after the adoption of this Ordinance.

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: _____
City Secretary (Seal)

Signed: _____
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, 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.

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.
- (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, if produced:
 - a. During Residential Quiet Hours, unless the dB(A) limitation in Sec 54-40(1)(a) is satisfied, or the next sentence is applicable. If the sound is produced during Residential Quiet Hours at a time authorized in writing by the building official, a decibel limit of 85 dB(A) shall apply during the time period authorized by the Building Official.
 - b. Outside Residential Quiet Hours if it exceeds 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.
- (13) The sound made by lawnmowers or other lawn and garden equipment excluding leaf blowers, if:
 - a. Operated during Residential Quiet Hours that exceeds the dB(A) limitation in Section 54-40(1)(a); or
 - b. Operated outside Residential Quiet Hours that exceeds 85 dB(A) measured at twenty-five (25) feet from such equipment.
- (14) The sound made by any leaf blower operated:
 - a. During Residential Quiet Hours that exceeds the dB(A) limitation in Section 54-40(1)(a);
 - b. Outside Residential Quiet Hours that exceeds seventy (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 deemed 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 provide verification from the manufacturer confirming compliance with this subsection.

(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.
- (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 calibrated annually in accordance with ANSI S1.40 1984.
- (4) Measurements recorded shall be taken so as to provide a proper representation of the sound being measured.
- (5) 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.
- (6) At the property line of the building site where the noise is being generated, unless as otherwise stipulated in 54-41.

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.

	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

Agenda Item #4



Zoning & Planning Commission

Municipal Building 3800 University Blvd

Meeting Minutes

via teleconference due to the Coronavirus (COVID-19) health threat and in the Municipal Building

June 17, 2020

MEMBERS PRESENT: Richard Wilson, John Cutrer, Winfield Campbell, Sylvette Bobb, David Kuykendall, Bob Powell and Brian Brantley

STAFF PRESENT: Chief Building Official Clay Chew, Legal Counsel Alan Petrov, Public Works Director Gerardo Barrera, and Permit Technician Lisa Ray

GUESTS PRESENT: Winston Cooke, Richard Beck, Alida Drewes, Cynthia J. Johnson, Paul Scheet, Aurelio Diaz, Kim King, Elizabeth Strelow, Dick Yehle, Eddie Matthews, Perry Nolan, Ed Heathcott and Jennifer Sickman

1. **Notices, Rules, Etc.** Richard Wilson; Presiding Officer, called the meeting to order at 6:25 p.m. and asked commission members and staff to introduce themselves. Richard Wilson asked staff to confirm that appropriate notices were given. Clay Chew stated notices were posted per state and local laws.
2. **Noise Regulations.** There were eight residents, Winston Cooke, Richard Beck, Alida Drewes, Cynthia Johnson, Paul Scheet, Aurelio Diaz, Kim King, Elizabeth Strelow and Jennifer Sickman who spoke in favor of amending the current ordinance to extend quiet hours and restrict the type of leaf blowers that are used to a 70 decibel rating or lower. There were four residents, Dick Yehle, Eddie Matthews, Perry Nolan and Ed Heathcott who were opposed to amending the ordinance, as they felt it would be difficult to enforce and create more consequences than benefits. Kevin Taylor and Evan Duvall shared their notes from the City Council workshop citing that other cities have been able to enforce leaf blower restrictions with success and noticeable noise reduction. Kevin and Evan also provided pricing and local vendors that supply lower rated decibel leaf blowers. Richard Wilson made a motion to present City Council with two options (with a recommendation for the quiet hours option) to address the regulation of yard care equipment and leaf blowers. There was also discussion regarding other issues with the current draft of the ordinance and the Commission gave staff direction on changes to be incorporated in the next draft of the ordinance. Second by John Cutrer. **AYES:** Richard Wilson, John Cutrer, Winfield Campbell, Sylvette Bobb, Bob Powell and Brian Brantley. **NOES:** David Kuykendall. **ABSTAIN:** None. **Motion carried.**





The City of West University Place
A Neighborhood City

- 3. **Lighting Regulations.** There was general discussion regarding verbiage and placement of the proposed ordinance changes. ZPC decided to delete Section 54.215. Richard Wilson made a motion to present the final draft to City Council for approval. Second by John Cutrer. **AYES:** Richard Wilson, John Cutrer, Winfield Campbell, Sylvette Bobb, David Kuykendall, Bob Powell and Brian Brantley, **NOES:** None. **Motion carried.**
- 4. **Minutes.** The commission reviewed the minutes of the meeting held on May 14, 2020. Richard Wilson made a motion to approve the meeting minutes. Second by Brian Brantley. **AYES:** Richard Wilson, John Cutrer, Winfield Campbell, Sylvette Bobb, David Kuykendall, Bob Powell and Brian Brantley. **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, David Kuykendall, Bob Powell and Brian Brantley. **NOES:** None. **ABSTAIN:** None. Meeting adjourned at 7:59 p.m.

PASSED THIS _____ DAY OF _____, 2020

Richard Wilson, Chairman

ATTEST: _____

Mrs. Lisa Ray, Permit Technician

