



AGENDA

BARTONVILLE TOWN COUNCIL SPECIAL MEETING

November 28, 2018

BARTONVILLE TOWN HALL, 1941 E. JETER, BARTONVILLE, TX 76226

6:30 PM

A. CALL SPECIAL MEETING TO ORDER

B. CLOSED SESSION

The Town Council to convene into a closed meeting pursuant to Texas Government Code Chapter 551, section 551.071 to discuss matters relating to consultation with Town Attorney as follows:

1. Consultation with Town Attorney regarding legal issues concerning the Town's noise ordinance.
2. Consultation with Town Attorney regarding legal issues concerning the contractor services agreement with Brian Hall d/b/a/ Brian the Animal Guy.
3. Consultation with Town Attorney regarding legal issues concerning the request for a Conditional Use Permit to allow for the operation of an Agricultural Store located at 2201 E FM 407, Bartonville, Texas.

C. RECONVENE OPEN MEETING

The Town Council to reconvene into an open meeting and consider action, if any, on items discussed in closed session.

D. PLEDGE OF ALLEGIANCE

E. PUBLIC PARTICIPATION/CITIZEN APPEARANCES

Please fill out a "Citizen Participation" form in order to address the Council and turn the form in to the Town Secretary.

The purpose of this item is to allow the public an opportunity to address the Town Council on issues that are not the subject of a public hearing. Any item requiring a public hearing will allow the public to speak at the time that item appears on this agenda as indicated as a "Public Hearing."

F. REGULAR ITEMS

1. Discuss and consider approval of an ordinance amending the Town of Bartonville Code of Ordinances, Chapter 8, Entitled "Offenses and Nuisances," by enacting a new Article 8.05, entitled "Noise."

G. ADJOURNMENT

I do hereby certify that the Notice of Meeting was posted on the bulletin board at Town Hall of the Town of Bartonville, Texas, a place convenient and readily accessible to the public at all times and said Notice was posted on the following date and time: Wednesday, November 21, 2018, at 9:50 a.m., at least 72 hours prior to the time of said meeting.

A handwritten signature in blue ink that reads "Tammy Dixon". The signature is written in a cursive style and is positioned above a horizontal line.

Tammy Dixon, TRMC, CMC, Town Secretary

The City Council reserves the right to adjourn into a closed meeting or executive session as authorized by Texas Government Code, Sections 551.001, et seq. (the Texas Open Meetings Act) on any item on its open meeting agenda in accordance with the Texas Open Meetings Act, including, without limitation Sections 551.071-551.088 of the Texas Open Meetings Act. Any final action, decision, or vote on a matter deliberated in a closed meeting will only be taken in an open meeting that is held in compliance with Texas Government Code, Chapter 551.



TOWN COUNCIL AGENDA ITEM NO. 1

REGULAR ITEM

DATE: November 28, 2018

FROM: Michael Montgomery, Town Administrator

ITEM: Discuss and consider approval of an ordinance amending the Town of Bartonville Code of Ordinances, Chapter 8, Entitled "Offenses and Nuisances," by enacting a new Article 8.05, entitled "Noise."

SUMMARY:

The current noise standards for the Town are located within Chapter 14, Zoning of the Code of Ordinances. The noise ordinance needs to be updated and moved to Chapter 8, Offenses and Nuisances.

After careful commiseration by both staff and the Town Attorney. An enforceable and defensible ordinance is being presented.

FISCAL IMPACT:

N/A

LEGAL REVIEW:

This draft ordinance has been reviewed by Ed Voss, Town Attorney

ATTACHMENTS:

- Draft Ordinance

RECOMMENDATION:

Move to approve an ordinance amending the Town of Bartonville Code of Ordinances, Chapter 8, Entitled "Offenses and Nuisances," by enacting a new Article 8.05, entitled "Noise."

**TOWN OF BARTONVILLE
ORDINANCE NO. _____**

AN ORDINANCE AMENDING THE TOWN OF BARTONVILLE CODE OF ORDINANCES, CHAPTER 8, ENTITLED “OFFENSES AND NUISANCES,” BY ENACTING A NEW ARTICLE 8.05, ENTITLED “NOISE”; PROVIDING FOR NO CONFLICT WITH OTHER ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Bartonville, Texas (“Town”), is a Type A General Law Municipality located in Denton County, Texas, created in accordance with provisions of the Texas Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the Town, is a general law municipality empowered under the Texas Local Government Code, Section 51.001, to adopt an ordinance or rule that is for the good government of the Town; and

WHEREAS, the Town may define and declare what activities constitute a nuisance and authorize and direct the summary abatement of the nuisance, abate and remove a nuisance, punish by fine the person responsible for the nuisance, and otherwise protect the public health and comfort from nuisances, under Section 217.002 of the Texas Local Government Code; and

WHEREAS, the Town may suppress or prevent any noise and disturbance in any public or private place in the Town under Section 217.003(b) of the Texas Local Government Code; and

WHEREAS, the Town Council of the Town of Bartonville, Texas (“Town Council”), finds that it is in the best interest of the health, safety, and welfare of its citizens and the general public to enact a new Article 8.05 of Chapter 8 of the Town Code of Ordinances to provide regulations and limitations on noise within the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARTONVILLE, TEXAS, THAT:

**SECTION 1.
ADOPTION OF PREMISES**

All of the above premises are found to be true and correct legislative determinations and are incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2.
ENACTING NEW ARTICLE 8.05, ENTITLED “NOISE”

From and after the effective date of this Ordinance, the Town of Bartonville Code of Ordinances, Chapter 8, entitled “Offenses and Nuisances,” is hereby amended by adding a new Article 8.05, entitled “Noise,” which shall read as follows:

“Article 8.05 NOISE

Sec. 8.05.001 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

All technical terminology used in this article, not defined in this section, shall be interpreted in conformance with applicable American National Standards Institute (ANSI) noise specifications including, but not limited to, ANSI section 1.1-1960 and section 1.4-1971 or those from its successor publications or bodies.

A-weighted sound pressure level means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read shall be designated dB(A) or dBA.

Ambient sound level means the sound level of the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources. It is also the A-weighted sound level exceeded 90 percent of the time (L90) based on a measurement period which shall not be less than ten minutes nor more than 30 minutes.

Decibel means logarithmic unit of measure used in describing the amplitude of sound, denoted as dB.

Device means any mechanism which is intended to produce, or which actually produces, noise when operated or handled.

Emergency vehicle means a motor vehicle used in response to a public calamity or to protect persons or property from an imminent danger.

Emergency work means work made necessary to restore property to a safe condition following a public calamity, work to restore public utilities or work required to protect persons or property from an imminent danger.

Gross combination weight rating (GCWR) means the value specified by the manufacturer as the recommended maximum loaded weight of a combination vehicle in cases where the trailer and tractor are separable.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle.

Motor vehicle means any vehicle propelled by mechanical power such as, but not limited to, any passenger car, truck, truck-trailer, semitrailer, camper, motorcycle, minibike, go-cart, dune buggy or racing vehicle.

Muffler means any apparatus consisting of baffles, chambers or acoustical absorbing material whose primary purpose is to transmit liquids or gases while causing a significant reduction to sound emission.

Noise means any sound which is unwanted or which causes, or tends to cause, an adverse psychological or physiological effect on human beings.

Percentile sound pressure level (unit percentile level) means the A-weighted sound pressure level that is exceeded one percent of the time in a measurement period. It is denoted L1. (Tenth percentile sound level: the A-weighted sound pressure level that is exceeded ten percent of the time in any measurement period, such as the level that is exceeded for one minute in a ten-minute period. It is denoted L10.) (Ninetieth percentile sound level: the A-weighted sound pressure level that is exceeded 90 percent of the time in any measurement period, such as the level that is exceeded for nine minutes in a ten-minute period. It is denoted L90.)

Person means any individual, firm, association, partnership, corporation or any other entity, public or private.

Property boundary means an imaginary line at the ground surface and its vertical extension which separates the real property owned or occupied by one person from that owned or occupied by another person.

Public and private projects means any activity, other than the construction or alteration of a single-family dwelling, that requires a building permit issued by the Town building official.

Public right-of-way means any street, avenue, boulevard, highway, alley or similar place which is owned or controlled by a public governmental entity.

Public service work means work conducted by a governmental entity in the interest of the community.

Sound means a temporal and spatial oscillation in pressure, or other physical quantity in a medium with internal forces that causes compression and rarefaction of that medium, and which propagates at finite speed to distant points.

Sound level means the weighted sound pressure level measured by the use of metering characteristic and weighted as specified in American National Standards

Institute Publication S1.4-1971. The sound pressure level of a sound expressed in decibels is 20 times the logarithm to the base ten of the ratio of the pressure of the sound to the reference sound pressure of 20 micropascals. If the frequency weighting employed is not indicated, the A-weighting shall apply.

Sound level meter means an instrument, which includes a microphone, amplifier, RMS detector and integrator, time averager, output meter and weighting networks, that is sensitive to pressure fluctuations. The instrument reads sound pressure level when properly calibrated with an acoustical calibrator accurate to one dB and is Type II or Type I so specified in ANSI Publication S1.4-1971 or the latest approved revision thereof.

Stationary sound source means any device, fixed or movable, which is located or used on property other than a public right-of-way.

Town means the Town of Bartonville or an authorized representative of the Town.

Vibration means a temporal and spatial oscillation of displacement, velocity or acceleration in a solid material.

Vibration perception threshold means the minimum ground- or structure-borne vibrational motion necessary to cause a person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.

Sec. 8.05.002 Policy

It is the policy of the Town to minimize the exposure of citizens to excessive noise and to protect, promote and preserve the public health, comfort, convenience, safety and welfare. It is the express intent of the Town to control the level of noise in a manner which promotes commerce; protects the sleep and repose of citizens; promotes the use, value and enjoyment of property; and preserves the quality of the environment.

Sec. 8.05.003 Administration and noise measurements

(a) The provisions of this article shall be administered by and under direction of the Town Administrator and/or his authorized representative.

(b) In order to implement and enforce this article, and for the general purpose of noise and vibration abatement and control, the duly appointed and authorized representative of the Town Administrator's office shall have the authority to:

- (1) make necessary inspections and tests with proper authorization or permission from the owner of any private property or place; and
- (2) issue notice of violation and/or abatement orders to those in violation of the provisions of this article.

(c) Sound level measurements shall be made with a sound level meter Type II or better using the A-weighting network in accordance and conforming with the noise measurement standards promulgated by the American National Standards Institute and test procedures established by the Town.

Sec. 8.05.004 Environmental sound levels

a) It shall be a violation of this article for any person to operate or permit to be operated any stationary source of sound which creates a unit percentile sound level (L1) greater than the sound pressure level (L90) as set forth in this article, or creates a tenth percentile sound level (L10) or a ninetieth percentile sound level (L90) which exceeds the limits set forth in this article for the land use receiving the sound when measured at the property boundary of the receiving land.

(b) For the purpose of enforcement, a sound measurement period shall not be less than ten minutes nor more than 30 minutes.

(c) Sound level limits.

(1) Limiting sound levels, 7:00 a.m. to 10:00 p.m.

Category	L90	L10
Residential	55 dBA	65 dBA
Commercial	62 dBA	72 dBA
Industrial	75 dBA	85 dBA

(2) Limiting sound levels, 10:00 p.m. to 7:00 a.m.

Residential	50 dBA	60 dBA
Commercial	57 dBA	67 dBA
Industrial	75 dBA	85 dBA

When a noise source can be identified and its noise measured in more than one land use category, the limits of the most restrictive use shall apply at the boundary and within the most restrictive land use category.

Sec. 8.05.005 Public and private project review

All public and private projects shall be subject to a review process to determine if such projects are likely to cause noise or vibration in violation of this article. The Town shall be authorized to make or require any investigations or studies which in its opinion are necessary to determine if compliance can be achieved. The Town shall also have the authority to require noise attenuation measures in accordance with the findings of such investigations or studies for the purpose of determining compliance with this article.

Sec. 8.05.006 Noises prohibited

The following sounds are hereby determined to be specific noises which can constitute a noise disturbance, and violations of this article are hereby defined. A noise does not have to exceed the specifications for environmental sound levels contained in section 8.05.004 in order to constitute a violation of this section.

(1) *Animals.* Owing, keeping, possessing or harboring any animal or animals which, by frequent or habitual noise-making, either violates the sound levels of this article or unreasonably disturbs or interferes with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained. The provisions of this section shall apply to all public and private facilities, including any animal shelter or commercial kennel, which hold or treat animals.

(2) *Radios, television sets, musical instruments and similar devices.* Operating or permitting to be operated any radio receiving set, musical instrument, television, phonograph, drum or other machine or device for the production or reproduction of sound in such a manner as to violate the sound levels of this article or to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained.

(3) *Exterior loudspeakers.* Operating or permitting to be operated any loudspeaker or sound-amplifying equipment in a fixed position on public or private property, or in a movable position mounted upon any vehicle in or upon any street, alley, sidewalk, park, place, or public or private property, for the purpose of commercial advertising, giving instructions, directions, talks, addresses, lectures, or transmitting music to any persons or assemblages of persons in such a manner as to violate the sound levels as listed in this article or to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained.

(4) *Construction work.* Operating or permitting to be operated any equipment used in commercial construction, repair, alteration or demolition work on buildings, structures, streets, alleys or appurtenances thereto, between the hours of 10:00 p.m. and 7:00 a.m. the following day, or in such a manner as to violate the sound levels as listed in this article or to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained. In no event may such construction work exceed the sound level limits for an industrial land use as set forth in this article, measured on the property boundary of the receiving land use, unless a permit of variance is first obtained.

(5) *Power equipment.* Operating or permitting to be operated any power equipment in residential zones outdoors between the hours of 10:00 p.m. and 7:00 a.m. the following day, or in such a manner as to violate the sound levels as listed in this article or to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of

variance is first obtained. Power equipment rated five horsepower or less shall not exceed a sound level of 74 dBA at a distance of 50 feet. Power equipment rated more than five horsepower shall not exceed a sound level of 82 dBA at a distance of 50 feet.

(6) *Enclosed places of public entertainment.* Operating or permitting to be operated in any enclosed place of public entertainment any loudspeaker or other source of sound which produces, at a point that is normally occupied by the customer, maximum sound pressure levels of 100 dBA as read on a sound level meter, unless a conspicuous and legible sign is posted near each public entrance stating: "Warning Sound Levels Within May Cause Permanent Hearing Impairment." This provision shall not be construed to allow the operation of any loudspeaker or other source of sound in such a manner as to violate the sound levels as listed in this article or to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained.

(7) *Powered model mechanical devices.* The flying of model aircraft powered by internal combustion engines, whether tethered or not, or the firing or operating of model rocket vehicles or other similar noise-producing devices, in a residential area between the hours of 10:00 p.m. and 7:00 a.m. the following day, or in such a manner as to violate the sound levels as listed in this article or to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained.

(8) *Refuse collection.* The collection of garbage, waste or refuse between the hours of 10:00 p.m. and 7:00 a.m. the following day in any area zoned residential or within 300 feet of an area zoned residential, or in such a manner as to violate the sound level as listed in this article or to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained.

(9) *Emergency signaling devices.* The intentional sounding or permitting the sounding outdoors of any fire, burglar or civil defense alarm, siren, whistle or similar stationary emergency signaling device for more than five minutes during any consecutive 60-minute period or so as to violate the sound levels as listed in this article except for those exemptions outlined in this article.

(10) *Loading and unloading merchandise.* The loading and unloading of merchandise or cargo between the hours of 10:00 p.m. and 7:00 a.m. of any motor vehicle where such loading or unloading area is within a distance of 200 feet from the property line of any residential dwelling.

Sec. 8.05.007 Motor vehicle noise

a) *Exceeding noise limits.* No person shall drive or move or permit to be driven or moved a motor vehicle or combination of motor vehicles at any time on a public right-of-way under any conditions of grade, load, acceleration or deceleration in such a manner as to exceed the sound limits set forth in this section for the appropriate category of motor vehicle. Measurement shall be made at a distance

of 25 feet, measured from the receiving side (most restrictive zone classification), monitored at a height of at least four feet above the immediate surface.

(b) *Motor vehicle and motorcycle sound limits.*

(1) Any motor vehicle, motorcycle, or combination of vehicles towed by any motor vehicle with a GVWR or GCWR less than 10,000 pounds shall not exceed 96 dBA in speed limits of 40 miles per hour or less.

(2) Any motor carrier vehicle with a GVWR or GCWR of 10,000 pounds or more shall not exceed 96 dBA in speed limits of 40 miles per hour or less.

(c) *Modifications to motor vehicles.* No person shall operate or cause to be operated any motor vehicle, unless the vehicle is equipped with an exhaust system which includes a tailpipe and resonator where the original vehicle design included a tailpipe and resonator. Such exhaust system shall be:

(1) Equipped with a muffler which is in good working order (free of damage to the baffles contained in the muffler and is in constant operation).

(2) Not equipped with any cut out, bypass or similar device.

(d) *Tire noise.* It is unlawful for any person to operate a motor vehicle in such a manner as to cause or allow to be emitted squealing, screeching or other such sound from the tires in contact with the ground because of rapid acceleration or excessive speed around corners or other such reason; provided that sound resulting from emergency braking to avoid imminent danger shall be exempted from this section.

(e) *Off-highway motor vehicles.* No person shall operate or permit to be operated any motorized vehicle off a public right-of-way in such a manner as to exceed the sound levels of section 8.05.004 at the receiving property boundary.

Sec. 8.05.008 Exemptions, permits of variance and appeals

(a) *Exceptions.* Sounds caused in the performance of emergency or public work, including public utility operations, acting to protect the health, safety or welfare of the community shall not be subject to the provisions of this article. Nothing in this section, however, shall be construed to permit law enforcement, ambulance, fire or other public service personnel to make excessive noise in the performance of their duties when such sound is clearly unnecessary.

(b) *Permits of variance.*

(1) Applications for a permit for relief from the noise levels designated in this article on the basis of undue hardship may be made to the Town Administrator or his duly authorized representative. Any permit granted by the Town Administrator hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The Town Administrator or his duly authorized representative may grant relief, as applied for, if it is found:

- a. that additional time is necessary for the applicant to alter or modify the activity or operation to comply with this article; or
- b. that the activity, operation or noise source will be of temporary duration and cannot be done in a manner that would comply with other provisions of this article; and
- c. that no other reasonable alternative is available to the applicant; and
- d. that the Town may prescribe any conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood.

(2) No permanent noise variance permit may be issued except by resolution of the Town Council. Before such action may be taken, notice of such consideration of a permanent noise variance permit shall be sent to all owners of real property lying within 1,000 feet of the property on which the noise will be generated. Such notice shall be given not less than ten (10) days before the date set for hearing by depositing a notice, properly addressed and postage paid, in the United States Post Office to such property owners as the ownership appears on the last approved Town tax roll.

(3) The Town may require a noise study to be performed in order to evaluate the impact of a proposed permit of variance. Such study must be performed by personnel trained and qualified to conduct noise evaluations and studies of the impact of noise. The Town Administrator shall make the determination as to whether personnel are trained and qualified to conduct noise evaluations and studies of the impact of noise. In the event such a study is necessary, the requesting party shall be notified in writing of such requirement. The requesting party shall be responsible for the expense of any study.

(c) *Appeals.* Any individual who claims to be adversely affected by noise as a result of the issuance of a variance permit or any individual who is aggrieved by the disapproval of a variance permit may appeal in writing to the Town stating any information to support his/her claim. All appeals shall be reviewed by the Town Council. The appeal shall be made in writing at the office of the Town Secretary no later than ten (10) working days before a regularly scheduled meeting of the Town Council. There shall be an appeal fee of \$25.00 payable to the Town when the appeal is filed.

Sec. 8.05.009 Penalty

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in accordance with the general penalty provision found in section 1.01.009 of this code for each offense, and each and every day such offense is continued, and/or each and every

time an offense takes place after being informed of the violation by any peace officer, shall constitute a new and separate offense.

**SECTION 3.
CONFLICT WITH OTHER ORDINANCES**

Except for the noise provisions of Chapter 32 of Exhibit A of Article 14.02 of Chapter 14 of the Code of Ordinances of the Town of Bartonville, which are expressly not preempted by this Ordinance, in the event any section of this Ordinance conflicts in effect or application with any other section of the Code of Ordinances of the Town of Bartonville, this Ordinance shall prevail.

**SECTION 4.
SEVERABILITY**

It is hereby declared to be the intention of the Town Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance, since the same would have been enacted by the Town Council without incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

**SECTION 5.
ENGROSSMENT AND ENROLLMENT**

The Town Secretary of the Town of Bartonville is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date clause in the minutes of the Town Council of the Town of Bartonville and by filing this Ordinance in the Ordinance records of the Town.

**SECTION 6.
PUBLICATION**

The Town Secretary of the Town of Bartonville is hereby directed to publish in the Official Newspaper of the Town of Bartonville the Caption and the Effective Date of this Ordinance for two (2) days.

**SECTION 7.
EFFECTIVE DATE**

This Ordinance shall be in full force and effect upon passage and publication in the official newspaper of the Town.

AND IT IS SO ORDAINED.

PASSED AND APPROVED by the Town Council of the Town of Bartonville, Texas, on the 28th day of November, 2018.

APPROVED:

Bill Scherer, Mayor

(Seal)

ATTEST:

Tammy Dixon, Town Secretary

DRAFT