

3.3-7. "C-1" local business district. The following regulations shall apply in all "C-1" districts:

(a) *Authorized uses.* Uses permitted by right shall be those set forth in the Land Use Matrix in Section 4 of this Chapter. The allowed uses in the district, which are intended to be identical with those listed in the Land Use Matrix, are as follows:

(1) *Uses permitted by right:*

Residential uses:

- Accessory building/structure
- Accessory dwelling (one accessory dwelling per lot, no kitchen)
- Assisted living facility/retirement home
- Boardinghouse/lodging house
- Community home (see definition)
- Duplex / two-family / duplex condominiums
- Family home adult care
- Family home child care
- Home Occupation (see Sec. 5.5)
- Multifamily (apartments/condominiums)
- One family dwelling, detached
- Rental or occupancy for less than one month (see Sec. 5.17)
- Residential use in buildings with the following non-residential uses
- Single or two family industrialized home (see Sec. 5.8)

Non-residential uses:

- Accounting, auditing, bookkeeping, and tax preparations
- Adult day care (no overnight stay)
- Adult day care with overnight stay
- Ambulance service (private)
- Animal grooming shop
- Answering and message services
- Antique shop
- Appliance repair
- Armed services recruiting center
- Art dealer / gallery
- Artist or artisan's studio
- Automobile driving school (including defensive driving)
- Bakery (retail)
- Bank, savings and loan, or credit union
- Bar/Tavern (No outdoor music)
- Barber/beauty college (barber or cosmetology school or college)
- Barber/beauty shop, haircutting (non-college)
- Barns and farm equipment storage (related to agricultural uses)
- Battery charging station
- Bicycle sales and/or repair
- Book binding
- Book store
- Cafeteria / café / delicatessen
- Campers' supplies
- Cemetery and/or mausoleum
- Check cashing service
- Child day care/children's nursery (business)
- Church/place of religious assembly
- Cleaning, pressing and dyeing (non-explosive fluids used)
- Clinic (dental)
- Clinic (medical)

Clinic (emergency care)  
Club (private)  
Coffee shop  
Communication equipment (installation and/or repair)  
Community building (associated with residential uses)  
Computer and electronic sales  
Computer repair  
Consignment shop  
Contractor's temporary on-site construction office (with permit from Building Official; Sec. 5.10)  
Convenience store with or without fuel sales  
Country club (private)  
Credit agency  
Curio shops  
Custom work shops  
Day camp  
Department store  
Drapery shop / blind shop  
Drug sales/pharmacy  
Electrical repair shop  
Electrical substation  
Exterminator service  
Farmers market (produce market - wholesale)  
Farms, general (crops) (see Chapter 6, Municipal Code and Sec. 5.9)  
Farms, general (livestock/ranch) (see Chapter 6, Municipal Code and Sec. 5.9)  
Filling station (fuel tanks must be below the ground)  
Florist  
Food or grocery store with or without fuel sales  
Fraternal organization/civic club (private club)  
Frozen food storage for individual or family use  
Funeral home/mortuary  
Furniture sales (indoor)  
Garden shops and greenhouses  
Golf course (miniature)  
Golf course, public or private  
Governmental building or use with no outside storage  
Greenhouse (commercial)  
Handicraft shop  
Hardware store  
Health club (physical fitness; indoors only)  
Hospice  
Hospital, general (acute care/chronic care)  
Hospital, rehabilitation  
Hotel/motel  
Hotels/motels - extended stay (residence hotels)  
Ice delivery stations (for storage and sale of ice at retail only)  
Kiosk (providing a retail service)  
Laundromat and laundry pickup stations  
Laundry/dry cleaning (drop off/pick up)  
Laundry/washateria (self serve)  
Lawnmower sales and/or repair  
Locksmith  
Martial arts school  
Medical supplies and equipment  
Mini-warehouse/self storage units (no boat / RV storage permitted; no outside storage)  
Motion picture studio, commercial film  
Motion picture theater (indoors)

Museum  
Needlework shop  
Nursing/convalescent home/sanitarium  
Offices, brokerage services  
Offices, business or professional  
Offices, computer programming and data processing  
Offices, consulting  
Offices, engineering, architecture, surveying or similar  
Offices, health services  
Offices, insurance agency  
Offices, legal services - including court reporting  
Offices, medical offices  
Offices, real estate  
Offices, security/commodity brokers, dealers, exchanges and financial services  
Park and/or playground (public or private)  
Parking lots (for passenger car only) (not as incidental to the main use)  
Pawn shop  
Pet shop / supplies (10,000 sq. ft. or less)  
Photographic printing/duplicating/copy shop or printing shop  
Photographic studio (no sale of cameras or supplies)  
Photographic supply  
Plant nursery (growing for commercial purposes with retail sales on site)  
Plant nursery (retail sales / outdoor storage)  
Plumbing shop  
Public recreation/services building for public park/playground areas  
Radio/television shop, electronics, computer repair  
Recreation buildings (public)  
Refreshment/beverage stand  
Restaurant/prepared food sales  
Restaurant with drive through service  
Retail store and shopping center with drive through service (50,000 sq. ft. bldg. or less)  
Retirement home/home for the aged  
School, K-12 (public or private)  
School, vocational (business/commercial trade)  
Security monitoring company  
Shoe repair shops  
Studios (art, dance, music, drama, reducing, photo, interior decorating, etc.)  
Studio for radio or television (without tower)  
Tailor shop (see home occupation)  
Telecommunications towers/antennas (see Sec. 5.7)  
Telemarketing agency  
Telephone exchange buildings (office only)  
Theater (non-motion picture; live drama)  
Tool rental  
Travel agency  
University or college (public or private)  
Upholstery shop (non-auto)  
Vacuum cleaner sales and repair  
Video rental / sales  
Water storage (surface, underground or overhead), water wells and pumping stations that are part of a public or municipal system  
Woodworking shop (ornamental)

Any comparable business or use not included in or excluded from any other district described herein.

(2) *Conflict.* In the event of conflict between the uses listed in the Land Use Matrix and those listed in Subsection (1), the uses listed in this subsection shall be deemed those authorized in the district.

(b) *Maximum height, minimum area and setback requirements:*

(1) Non-residential uses.

(i) *Height.* 35 feet.

(ii) *Front building setback.* 25 feet.

(iii) *Side building setback.* No side building setback is required except that where a side line of a lot in this district abuts upon the side line of a lot in a "R" or "B-1" zone, a side building setback of not less than six feet shall be provided.

(iv) *Rear building setback.* 20 feet.

(v) *Residential setback.* Effective November 8, 2006, where a non-residential building abuts a one or two family use or zoning district, the setback from the one or two family property line shall be at least 20 feet plus one foot for each foot of building height over 20 feet.

(vi) *Width of lot.* The minimum width of a lot shall be 40 feet, provided that where a lot has less width than required and such lot was in separate ownership prior to February 4, 1984, this requirement will not prohibit the construction of a use enumerated in this district.

(vii) *Corner lots.* A minimum 25-foot front yard and side building setback adjacent to streets shall be required on all corner lots. A canopy at least six feet in height, attached to the main building, may be built within 15 feet of the street line so long as such construction is not supported by columns which will obstruct the vision of vehicles driving upon adjacent streets.

(viii) *Parking.* See Section 5.1. for permitted uses parking.

(2) One family dwellings.

(i) *Height.* 35 feet.

(ii) *Front building setback.* 25 feet.

(iii) *Rear building setback.* 20 feet.

(iv) *Side building setback.* There shall be a side building setback on each side of a building not less than five feet in width. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the side lot lines of the adjacent lots.

(v) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)

(vi) *Width of lot.* The minimum width of an interior lot shall be 60 feet and the minimum width of a corner lot shall be 70 feet, provided that where a lot has less width than herein required, and such lot was in separate ownership prior to September 25, 1967, this requirement will not prohibit the erection of a one-family dwelling.

(vii) *Lot area.* 6,600 square feet per family for interior lots, and 7,000 square feet per family for corner lots. Where a lot was legally under separate ownership prior to September 25, 1967, but has an area less than the minimum required in this provision, this regulation shall not prohibit the erection of a one-family residence. Where a public or community sewer is not available and in use for the disposal of all sanitary sewage, each lot shall provide not less than one half acre and one acre on the Edwards Aquifer Recharge Zone.

(viii) *Lot depth.* 100 feet.

(ix) *Parking.* Two off-street parking spaces shall be provided for each one family detached dwelling. See Section 5.1 for other permitted uses' parking.

(3) Duplexes.

(i) *Height.* 35 feet.

(ii) *Front building setback.* 25 feet.

(iii) *Rear building setback.* 20 feet.

(iv) *Side building setback.* There shall be a side building setback on each side of a building not less than five feet in width. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the side lot lines of the adjacent lots.

(v) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)

(vi) *Width of lot.* The minimum width of an interior lot shall be 60 feet and the minimum width of a corner lot shall be 70 feet.

(vii) *Lot area.* Duplexes hereafter erected or altered shall have a lot area of not less than 8,000 square feet for an interior lot and 8,500 square feet for a corner lot. Where a lot was legally under separate ownership prior to September 25, 1967, but has an area less than the minimum required in this provision, this regulation shall prohibit the erection of a two-family residence. Where a public or community sewer is not available and in use for the disposal of all sanitary sewage, each lot shall provide not less than one acre and approved by the City Sanitarian.

(viii) *Lot depth.* 100 feet.

(ix) *Parking.* Two off-street parking spaces shall be provided for each two-family dwelling unit. See Section 5.1 for other permitted uses' parking.

(4) Multifamily dwellings.

(i) *Height.* 35 feet; 50 feet when a pitched roof is used (minimum 4:12 slope).

(ii) *Front building setback.* 25 feet.

- (iii) *Rear building setback.* 25 feet.
- (iv) *Side building setback.* There shall be a side building setback on each side of a building not less than five feet in width. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the side lot lines of the adjacent lots.
- (v) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)
- (vi) *Residential setback.* Effective November 8, 2006, where a multifamily dwelling abuts a one or two family use or zoning district, the setback from the one or two family property line shall be at least 20 feet plus one foot for each foot of building height over 20 feet.
- (vii) *Width of lot.* The minimum width of an interior lot shall be 60 feet and the minimum width of a corner lot shall be 70 feet, provided that where a lot has less width than herein required, and such lot was in separate ownership prior to September 25, 1967, this requirement will not prohibit the erection of a one-family dwelling.
- (viii) *Lot area.* The minimum lot area for a multifamily dwelling shall be 15,000 square feet; for each unit over ten an additional 1,500 square feet of lot area shall be required. Where public or community sewer is not available and in use, for the disposal of all sanitary sewage, multifamily developments shall be approved by the City Sanitarian.
- (ix) *Lot coverage.* For multifamily structures, the combined area of all yards shall be at least 55 percent of the total lot or tract; provided, however, that in the event enclosed parking is provided the minimum total yard area requirement shall be 40 percent of the total lot or tract.
- (x) *Distance between structures.* For multifamily structures, there shall be a minimum of ten feet between structures side by side; a minimum of 20 feet between structures side by front or rear; a minimum of 40 feet between structures front to front; and a minimum of ten feet between structures backing rear to rear, and a minimum of 20 feet front to rear. (See Illustration 1)
- (xi) *Lot depth.* 100 feet.
- (xii) *Parking.* For apartments, apartment hotel units and other multifamily dwellings, off-street parking spaces shall be provided in accord with the following schedule:
  - 1. One-bedroom apartment or unit . . . 1 1/2 spaces
  - 2. Two-bedroom apartment or unit . . . 2 spaces
  - 3. Each Additional bedroom . . . 1/2 space
  - 4. Each dwelling unit provided exclusively for low income elderly occupancy . . . 3/4 space ("Low income elderly" is defined as any person 55 years of age or older with low or moderate income, according to HUD standards.)

See Section 5.1 for other permitted uses' parking.

### 3.6. *Special Use Permits.*

- 3.6-1. *Compatible and orderly development.* A special use permit may be granted to allow compatible and orderly development which may be suitable only in certain locations and zoning districts if developed in a specific way or only for a limited period of time.
- 3.6-2. *Application processing.* Application for a Special Use Permit shall be processed in accordance with Section 2.1 of this Chapter and shall include the pertinent information as determined by the type of Special Use Permit and additional information as determined by the Planning Director, the Planning Commission or the City Council.

#### Types of Special Use Permit:

*Type 1.* Regulates land use only; does not require specific site plan or schedule. Construction within a Type 1 Special Use Permit will comply with all of the standard construction requirements for the approved use at the time of construction permit, including drainage plans, TIA, driveway location, and landscaping.

*Type 2.* Requires a site plan drawn to scale and shall show the arrangement of the project in detail, including parking facilities, locations of buildings, uses to be permitted, landscaping, and means of egress and ingress.

- 3.6-3. *Standards.* When considering applications for a special use permit, the Planning Commission in making its recommendation and the City Council in rendering its decision on the application shall, on the basis of the site plan, if a Type 2, and other information submitted, evaluate the impact of the special use on, and the compatibility of the use with, surrounding properties and neighborhoods to ensure the appropriateness of the use at a particular location. The Planning Commission and the City Council shall specifically consider the extent to which:
- (a) *Comprehensive plan consistency.* The proposed use at the specified location is consistent with the goals, objectives and policies contained in the adopted Comprehensive Plan;
  - (b) *Zoning district consistency.* The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;
  - (c) *Supplemental Standards.* The proposed use meets all supplemental standards specifically applicable to the use as set forth in this Chapter;
  - (d) *Character and integrity.* The proposed use is compatible with and preserves the character and integrity of adjacent development and neighborhoods and, as required by the particular circumstances.

A Type 2 Special Use Permit may include improvements or modifications either on-site or within the public rights-of-way to mitigate development-related adverse impacts, including but not limited to:

- (1) Adequate ingress and egress to property and proposed structures thereon with particular reference to vehicular and pedestrian safety and convenience, and access in case of fire;
- (2) Off-street parking and loading areas;
- (3) Refuse and service areas;
- (4) Utilities with reference to location, availability, and compatibility;

- (5) Screening and buffering, features to minimize visual impacts, and/or set-backs from adjacent uses;
  - (6) Control of signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
  - (7) Required yards and open space;
  - (8) Height and bulk of structures;
  - (9) Hours of operation;
  - (10) Paving of streets, alleys, and sidewalks,
  - (11) Provisions for drainage,
  - (12) Exterior construction material and building design; and
  - (13) Roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development-generated traffic on neighborhood streets.
- (e) *Public health, safety, convenience and welfare.* The proposed use is not materially detrimental to the public health, safety, convenience and welfare, or results in material damage or prejudice to other property in the vicinity.

3.6-4. *Procedures for special use permit (SUP).* Granting of an SUP is considered zoning and as such, all the procedures for changing a zoning district apply to an application for an SUP. After a public hearing and upon the recommendation of the Planning Commission, the City Council may approve, deny or modify the site plan and issue a special use permit containing such requirements and safeguards as necessary to protect adjoining property, including conditions addressing the standards in Section 3.6-3(d).

3.6-5. *Revocation.* The SUP for a Type 1 permit may be considered for revocation if a use other than the use approved in the SUP or in the underlying zoning district is developed or other stated requirements are not met. The SUP for a Type 2 permit may be considered for revocation for the following reasons:

- (a) Construction is not begun within five years of the date of approval of the permit.
- (b) Progress toward completion is not being made. Progress toward completion includes the following:
  - (1) An application for a final plat is submitted;
  - (2) A good faith effort is made to file with a regulatory agency an application for a permit necessary to begin or continue completion of the project;
  - (3) Costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of 5% of the most recent appraised market value of the real property on which the project is located;
  - (4) Security is posted with the city to ensure performance of an obligation required by the city; or

- (5) Utility connection fees or impact fees for the project have been paid to the City or New Braunfels Utilities.
  - (c) *Abandonment of the project.* Abandonment includes development of the property in a way other than provided for by the SUP.
  - (d) Failure to satisfy the conditions of the SUP or follow the site plan made part of the SUP.
  - (e) *Code violations.* Revocation may be considered if there are three or more code violations in a 720 day period.
    - (1) *Notice to property owner.* If the Planning Director finds no less than three violations of any code of ordinances on the property within a 360 day period, he shall advise the applicant of a revocation hearing. The Planning Director shall notify the property owner in writing of the violations and that an administrative hearing will be held concerning the violations. Such notice shall be given at least 10 days prior to the hearing. The Planning Director shall take evidence and conduct an administrative hearing to determine if a revocation procedure should be initiated. Such a determination is not subject to appeal to the Zoning Board of Adjustment.
    - (2) If the Planning Director finds that there is credible evidence that the code of ordinances has been violated, or there have been convictions or guilty pleas in any court of competent jurisdiction, on at least three separate occasions within a 720 day period, and after the administrative hearing, he shall initiate a SUP revocation process.
    - (3) *Appeal to Municipal Court.* Any code violation may be appealed to, or considered by, the Municipal Court Judge. The parties at interest in this appeal may cross examine witnesses.
  - (f) *Revocation process.* The revocation process shall be the same as for a zoning district change, with notice to property owners within 200 feet, public hearing and recommendation by the Planning Commission, and public hearing and ordinance consideration by the City Council.
  - (g) The City Council may deny the SUP revocation, approve the revocation, deny the revocation and add additional restrictions to the SUP, suspend the SUP for a period the Council determines, or amend the SUP with probationary requirements and terms the Council determines.
  - (h) Upon revocation of a special use permit the property subject to the special use permit may be used for any permitted use within the applicable base zoning district.
- 3.6-6. *Compliance with conditions.* Conditions which may have been imposed by the City Council in granting such permit shall be complied with by the grantee before a Certificate of Occupancy may be issued by the Building Official for the use of the building on such property.
- 3.6-7. *Telecommunication towers and/or antennas.* See Sec. 5.7
- 3.6-8. *Deviation from Code.* The City Council may approve a special use permit with deviations to any provision of the Code of Ordinances. Such deviations shall be listed or shown in or as part of the Ordinance approving the special use permit.

5.3-4. *Additional Residential buffering requirements.*

(a) *Residential setback.*

Where a non-residential building or a multifamily development of more than three units abuts a one or two family use or zoning district, the setback from the one or two family property line shall be at least 20 feet plus one foot for each foot of building height over 20 feet.

(b) Where a non-residential building or a multifamily development is adjacent to residential uses or residential zoning outdoor audio or speakers are prohibited unless being used to provide ADA access at fuel pumps.

(c) Where a non-residential building or a multifamily development is adjacent to residential uses or residential zoning outside music is prohibited.

(d) Where a non-residential building or a multifamily development is adjacent to residential uses or residential zoning an additional 30 foot setback buffer will be required as separation between the residential property and any fuel pumps or fuel tanks.

## Sec. 82-9. - Noise regulations.

(a)

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

*dB(A)* shall mean the intensity of a sound expressed in decibels read from a calibrated sound level meter utilizing the A-level weighting scale and the slow meter response, as specified by the applicable publications of the American National Standards Institute or its successor body.

*Emergency* shall mean any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

*Legacy event* shall mean a special event that has been held in the city in substantially the same form for a minimum of 20 years.

*Music venue* shall mean a commercial property where sound equipment is used to amplify sound.

*Nonresidential property* shall mean any real property within the limits of the city which is not included in the definition of residential district as defined in this section.

*Person* shall mean any individual, association, partnership or corporation.

*Property line* shall mean the line along the ground surface, and its vertical extension, which separates the real property owned, leased or occupied by one person from that owned, leased, or occupied by any other person and the imaginary line which represents the legal limits of property of any person who owns, leases or otherwise occupies an apartment, condominium, hotel or motel room, office or any other type of occupancy.

*Public right-of-way* shall mean any street, avenue, boulevard, highway, road, thoroughfare, sidewalk, alley or any other property which is owned or controlled by a governmental entity.

*Residential district* shall mean the following zoning districts: R-1, R-1A-43.5, R-1A-12, R-1A-8, R-1A-6.6, R-2, R-2A, R3, R-3L, R-3H, B-1, B-1A, B-1B, TH, TH-A, ZH, ZH-A and SND-1. This includes all special and planned development districts identified as residential unless otherwise specified within the special district.

*Sound equipment* shall mean a loud speaker, public address system, amplification system, or other sound producing device.

*Sound nuisance* shall mean any sound which exceeds the maximum permitted sound levels specified in this section.

*Special event* shall mean a fundraiser, service, activity, program, presentation, meeting, (examples of which could be but are not limited to; a show, rally, class, banquet, festival, fair, assembly, race, parade, concert, bazaar, sporting activity), legacy event or other similar gathering of persons that is open to the general public and occurs in a local setting at a specified date and time or range of dates and times. This definition specifically excludes the regularly recurring meetings, such as the daily, weekly, or monthly gatherings of any organization.

(b)

*Declaration of findings.* The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual and unnatural in their time, place and use, affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city, and the necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions contained in this section are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city and its inhabitants.

(c)

*Maximum permissible sound levels.* No person shall conduct, permit or allow any activity or sound source to produce a measurable sound that exceeds the applicable dB(A) level listed below when measured, subject to the exception stated for residential districts only, at the nearest public right-of-way to the offending residence or business:

(1)

*Residential district.*

a.

Up to 85 decibels from 10:00 a.m. to 10:00 p.m.

b.

Up to 75 decibels at all other times.

A police officer taking a noise measurement in a residential district may take the measurement from either the closest public right-of-way to the offending residence or with the consent of a complainant, may take the measurement from the property line of the complainant.

(2)

*Nonresidential property.*

a.

*Decibel limits for music venues.*

1.

If a music venue is not located within 100 feet of a residential district, sound equipment may be operated at the following decibel levels: Up to 85 decibels at all times.

2.

If a music venue is located within 100 feet of a residential district, sound equipment may be operated at the following decibel levels:

A.

Up to 85 decibels between 10:00 a.m. and 10:00 p.m.

B.

Up to 80 decibels at all other times.

b.

*Decibel limits for all other types of non-residential properties.*

1.

If the property is not located within 100 feet of a residential district, the maximum permissible decibel level for any type of sound emitted from that property is: Up to 85 decibels at all times.

2.

If the property is located within 100 feet of a residential district, the maximum permissible decibel level for any type of sound emitted from that property is:

A.

Up to 85 decibels between 10:00 a.m. to 10:00 p.m.

B.

Up to 75 decibels at all other times.

Any sound that when measured at the nearest public right-of-way to the offending residence or business exceeds the dB(A) levels set forth in this section shall be prima facie evidence of a sound nuisance which unreasonably disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city in violation of this chapter.

(d)

*General prohibition.*

(1)

It shall be unlawful for any person to make, assist in making, permit, continue, cause to be made or continued or permit the continuance of any sound which exceeds the maximum permitted sound levels specified in section (c) which unreasonably disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city and within 5,000 feet of the city limits.

(2)

The acts enumerated in the following sections of this article, among others, are declared to be sound nuisances which are unreasonably loud, irritating, disturbing, or excessive sounds in violation of this article, but such enumeration shall not be deemed to be exclusive.

(e)

*Exceptions.* The following exceptions shall apply to any offense established in this chapter:

(1)

The emission of any sound was for the purpose of alerting persons to the existence of an emergency, danger or attempted crime.

(2)

The sound was produced by an authorized emergency vehicle.

(3)

The sound was produced by emergency work necessary to restore public utilities, or to restore property to a safe condition, or to protect persons or property from imminent danger, following a fire, accident or natural disaster.

(4)

The sound was generated:

a.

By a parade and spectators and participants on the parade route during a permitted parade;

b.

By spectators, participants, or hosts at a lawfully scheduled amphitheater event; c.

By spectators, participants, or hosts at a theme park or water park; d.

By spectators, participants, or hosts of any special event, as defined by this code. For purposes of this exception from prosecution, the use of this special event affirmative defense shall be limited to any event which occurs three times or less per year at the same location regardless of the identity of the event sponsor. This provision does not limit the number of lawfully allowed special events that can be held at a location; or e.

Any governmental entity, as defined by V.T.C.A., Local Government Code § 271.021 as it may be amended from time to time, specifically including, but not limited to the City of New Braunfels, and public schools, as well as private schools, post-secondary institutions, and schools of higher education and their spectators, functions and regular activities.

(5)

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

(6)

The sound was produced by operating or permitting the operation of any mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, lawnmower, or any other similar device used between the hours of 7:00 a.m. and 8:00 p.m. and which device did not produce a sound of 85 dB(A) or greater when measured from the nearest residential property where the sound is being received and was used for the maintenance or upkeep of the property on which it was used.

(7)

The sound was produced by the operation of any air conditioning unit which did not produce a sound of 85 dB(A) or greater on residential property or 85 dB(A) on nonresidential property, when measured at or near 15 feet from the air conditioning unit producing the sound being measured.

(f)

*Method of sound measurement.* Whenever portions of this chapter prohibit noise over a certain decibel limit, measurement of said noise shall be made with a decibel meter chosen by the chief of police which meets the standards prescribed by the American National Standards Institute at the time the device was purchased. The instruments shall be maintained in calibration and good working order. Calibration corrections shall be employed in meeting the response specifications prior to every sampling of noise. Measurements recorded shall be taken so as to provide an accurate representation of the noise being measured. Noise measurements shall be a minimum of 30 seconds in duration. The microphone shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used. Violations will be determined based on the highest registered reading in the measurement period. All measurement levels will be inclusive of any ambient noise that exists at the time of the measurement.

(g)

*Enforcement and penalties.*

(1)  
Any person, firm, or corporation who violates any provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine as proscribed below:

a.  
A fine not to exceed \$100.00 for the first offense plus court costs;

b.  
A fine not to exceed \$250.00 for the second offense plus court costs;

c.  
A fine not to exceed \$350.00 for the third offense plus court costs; and

d.  
A fine not to exceed \$500.00 for the fourth and any subsequent offenses plus court costs.

(2)  
Any person, firm, or corporation who obstructs, impedes, or interferes with a representative of the city, with a representative of a city department, with monitoring equipment, or with a person who has been ordered to abate a situation pursuant to this chapter and who is lawfully engaged in such abatement is guilty of a misdemeanor and upon conviction is punishable by a fine not to exceed \$500.00. Each act of violation and each day of violation is considered a separate violation.

(3)  
In addition to proceeding under authority of subsections (a) and (b) of this section, the city is entitled to pursue all other criminal and civil remedies to which it is entitled under authority of statutes or other ordinances against a person, firm, or corporation that remains in violation of this chapter.

(4)  
Only warning citations may be issued from the effective date of the ordinance from which this section derives through November 1, 2015, so that an educational effort by the city may be conducted to inform the public about the importance and requirements of this section.

(h)  
*Identification of violator.* The persons responsible for violations of this chapter are identified as follows:

(1)  
*At residential district.* Any resident present at the time of the offense, any property owner, or any guest or trespasser with the ability to control the level of noise at the time of the offense when no resident is present at the time of the offense.

(2)  
*At nonresidential property.* Any business owner, operator, manager, employee in charge, and all persons in control or in possession of the noise nuisance generating instrument or property at the time of the offense.

(3)  
*At any location with an unattended noise nuisance producing machine, device, instrument or combination of same.* Any person responsible for a violation under this section who leaves unattended any machine, instrument, device, animal, or any combination of same, which thereafter commences producing noise in violation of this chapter.

*Permits of variance.*

(i)

Prior to any violation of this section, a person may seek a variance under this section.

(1)

(2)

The city manager or designated representative is authorized to grant variances for relief of any provision in this chapter on the basis of undue hardship in cases where:

a.

The sound source will be of short duration and the activity cannot be conducted in a manner as to comply with this article.

b.

Additional time is necessary for the applicant to alter or modify their activity or operation to comply with this article.

c.

No reasonable alternative is available to the applicant.

d.

The city manager or designated representative may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects.

(3)

Evidence of a subsequent application for variance, the granting of a variance subsequent to receiving a violation, or any pending appeal under this section shall be inadmissible in a criminal prosecution under this section.

(j)

*Appeals.*

(1)

Any applicant who has been denied a variance or whose variance has been suspended shall have the right to a hearing before the city council.

(2)

Requests for a hearing shall be made in writing and received by the city secretary within ten days of the date of the denial or the issuance date of the notice on suspension. The city secretary shall schedule a hearing before the city council within 30 days of receipt of the request.

(3)

The city council shall have the authority to review all pertinent files and information regarding the applicant, which are in the custody of the city. Additionally, the city council shall have the authority to accept written and verbal testimony from any director, applicant, and interested citizens.

(4)

The city council shall have the authority to assess whether the city acted properly within its powers under this chapter in its denial or suspension of the variance. The majority vote of the city council shall determine whether to uphold or reject the city's action. Upholding the action of the city shall affirm the denial or suspension. Rejection of the city's action shall automatically reinstate a suspended variance.

(5)

No person whose permit has been denied or suspended shall create or allow the creation of the noise in dispute prior to final determination by the city council.

(k)

*[Staff report.]* Not later than November 30, 2016, the city council will receive a staff report on the effectiveness of the ordinance from which this section derives during the first year of enforcement.

(Ord. No. 2015-43, § 1, 8-24-2015)