

(Published in the Topeka Metro News October 29, 2012)

ORDINANCE NO. 19775

AN ORDINANCE introduced by City Manager Jim Colson, amending City of Topeka Code Sections 9.45.160, 9.45.170, 9.45.190 and 9.45.290 and specifically repealing said original sections as well as repealing in their entirety Sections 9.45.210, 9.45.230, 9.45.240, 9.45.250, 9.45.270 and 9.45.320 all concerning regulation of noise.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That section 9.45.160, Standards, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Standards.

The standards which shall be considered in determining whether a violation of this article exists shall include, but shall not be limited to, the following:

- (a) The volume of the noise;
- (b) The intensity of the noise;
- (c) Whether the nature of the noise is usual or unusual;
- (d) Whether the origin of the noise is natural or unnatural;
- (e) The volume and intensity of the background noise, if any;
- (f) The proximity of the noise to ~~residential sleeping facilities~~ residences;
- (g) The nature and zoning of the area within which the noise emanates;
- (h) The density of the inhabitation of the area within which the noise emanates;
- (i) The time of the day or night the noise occurs;
- (j) The duration of the noise;
- (k) Whether the noise is recurrent, intermittent or constant; and

(l) Whether the noise is produced by a commercial or noncommercial activity.

Section 2. That section 9.45.170, Prohibition generally, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Prohibition generally.

(a) It shall be unlawful for any person to make, continue or ~~cause~~allow to be made or continued, ~~any loud~~excessive, unnecessary, ~~or unusual~~ or loud noise ~~or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city~~ of any person of reasonable sensibilities, or which interferes with the use or enjoyment of property of any person of reasonable sensibilities unless the making and continuing of such noise is necessary for the protection and preservation of property or the health and safety of an individual; provided, that the provisions of this article shall not apply to such occasional and infrequent uses as authorized by resolution approved by the city council, upon a showing by an applicant and determination by the council that the proposed use does not offend the spirit of the findings of TMC 9.45.150.

(b) The acts mentioned in the following sections of this article, among others, are declared to be loud, disturbing and unnecessary noises in violation of this article, but such enumeration shall not be deemed to be exclusive.

Section 3. That section 9.45.190, Radios, phonographs, etc., of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

~~Radios, phonographs, etc~~Sound-producing device.

(a) ~~The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or~~ use or

53 ~~operation of any device for the~~capable of producing or reproducing or amplifying sound
54 in such manner as to disturb the peace, quiet and comfort of ~~the neighboring inhabitants~~
55 ~~or at any time with louder volume than is necessary for convenient hearing for the~~
56 ~~persons who are in the room, vehicle or chamber in which the machine or device is~~
57 ~~operated and who are voluntary listeners thereto~~ any person of reasonable sensibilities
58 is unlawful.

59 (b) The use or operation of any ~~radio receiving set, musical instrument,~~
60 ~~phonograph, machine or device~~ identified in subsection (a) between the hours of 11:00
61 p.m. and 7:00 a.m. ~~in such a manner as to be plainly~~ which is audible at a distance of 50
62 feet from the premises, building, structure or vehicle in which ~~the device~~ the device is located
63 shall be prima facie evidence of a violation of this section.

64 Section 4. That section 9.45.290, Construction or repairing of buildings, of The
65 Code of the City of Topeka, Kansas, is hereby amended to read as follows:

66 **Construction or repairing of buildings and exterior construction projects.**

67 The erection (including excavating), demolition, exterior alteration or exterior
68 repair of any building or exterior construction project is ~~permitted~~ prohibited between the
69 hours of 7:00 a.m. p.m. and 7:00 p.m. a.m. ~~Monday through Saturday.~~ Exceptions may be
70 granted in the interest of public health and safety with authorization from the ~~code~~
71 ~~enforcement director~~ city manager or designee. ~~Written permission for such work may~~
72 ~~be granted by the code enforcement officer after receipt of written justification.~~

73 Section 5. That section 9.45.210, Steam whistles, of The Code of the City of
74 Topeka, Kansas, is hereby repealed.

75 **Steam whistles.**

~~The blowing of any locomotive steam whistle or steam whistle attached to any stationary boiler or other signal device except to give notice of the time to begin or stop work or as a warning of fire, danger or upon request or authorization of proper city authorities is unlawful.~~

Section 6. That section 9.45.230, Defect in vehicle or load, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Defect in vehicle or load.~~

~~The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noises is unlawful.~~

Section 7. That section 9.45.240, Metal rails, pillars and columns – Transportation thereof, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Metal rails, pillars and columns – Transportation thereof.~~

~~The transportation of rails, pillars or columns of iron, steel or other material over and along streets and other public places upon carts, drays, cars, trucks or in any other manner when so loaded as to cause loud noises or as to disturb the peace and quiet of such streets or other public places is unlawful.~~

Section 8. That section 9.45.250, Loading or unloading vehicle – Opening or destruction of boxes, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Loading or unloading vehicle – Opening or destruction of boxes.~~

~~The creation of loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers is unlawful.~~

99 Section 9. That section 9.45.270, Hawkers, peddlers, of The Code of the City
100 of Topeka, Kansas, is hereby repealed.

101 **~~Hawkers, peddlers.~~**

102 ~~The shouting and crying of peddlers, hawkers and vendors which disturbs the~~
103 ~~peace and quiet of the neighborhood is unlawful.~~

104 Section 10. That section 9.45.320, In proximity to schools, courts, churches,
105 hospitals, of The Code of the City of Topeka, Kansas, is hereby repealed.

106 **~~In proximity to schools, courts, churches, hospitals.~~**

107 ~~The creation of any excessive noise on any street adjacent to any school,~~
108 ~~institution of learning, church or court while the same is in use, or which disturbs the~~
109 ~~workings of such institution, or which disturbs or unduly annoys patients in a hospital,~~
110 ~~provided conspicuous signs are displayed in such streets indicating that the street is a~~
111 ~~school, hospital or court street, is unlawful.~~

112 Section 11. That original § 9.45.160, § 9.45.170, § 9.45.190 and § 9.45.290 of
113 The Code of the City of Topeka, Kansas, are hereby specifically repealed.

114 Section 12. This ordinance shall take effect and be in force from and after its
115 passage, approval and publication in the official City newspaper.

116 Section 13. This ordinance shall supersede all ordinances, resolutions or rules,
117 or portions thereof, which are in conflict with the provisions of this ordinance.

118 Section 14. Should any section, clause or phrase of this ordinance be declared
119 invalid by a court of competent jurisdiction, the same shall not affect the validity of this
120 ordinance as a whole, or any part thereof, other than the part so declared to be invalid.
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PASSED AND APPROVED by the City Council on October 23, 2012.

CITY OF TOPEKA, KANSAS

William W. Buntten, Mayor

ATTEST:

Brenda Younger, City Clerk