

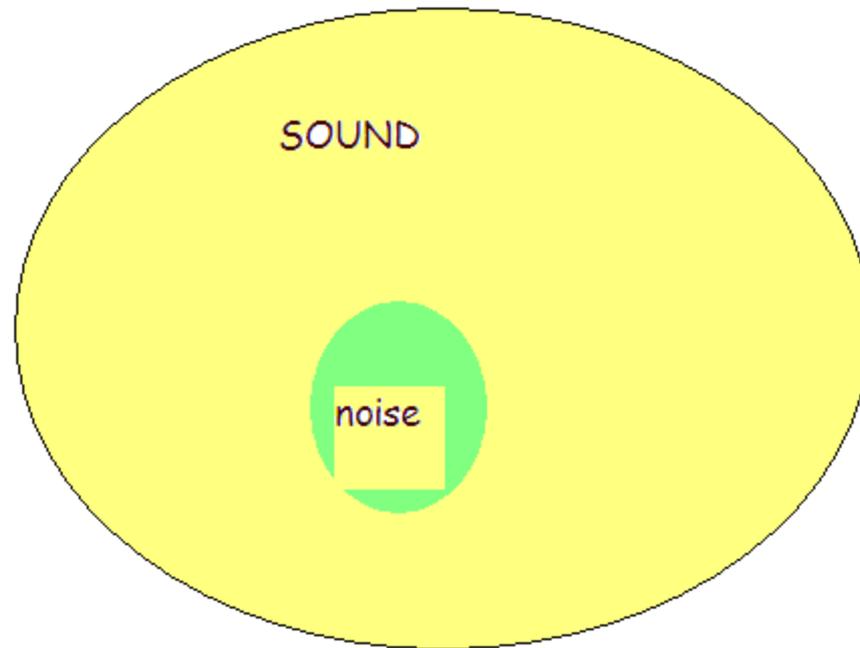
REGULATING NOISE

PRESENTED BY
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FIRST – What is Sound?

- ▶ There are several definitions from Webster's Dictionary (both as a noun and a verb):
 - ▶ Sound: that which is heard; the effect which is produced by the vibrations of a body affecting the ear; to utter audibly; to make a noise; to give out a sound;
 - ▶ A particular auditory impression from mechanical radiant energy that is transmitted by longitudinal pressure waves in a material medium;
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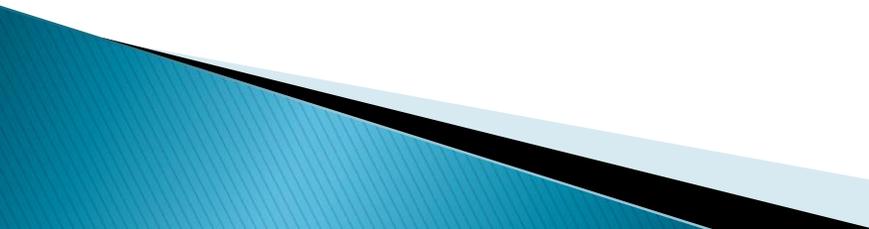
WHAT IS NOISE



AND NOISE

- ▶ A loud or unpleasant sound
 - ▶ Any sound that is undesired or interferes with one's hearing of something
 - ▶ A sound that lacks agreeable music quality or is noticeably unpleasant
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How Sound Travels

- ▶ Sound is a variation in pressure that the human ear can detect
 - ▶ Limited range of frequencies – with individual differences in range and tolerance
 - ▶ Surrounding environment is important
 - ▶ Interference with other sounds is important
 - ▶ Perception of volume depends on frequency
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A NEW RESIDENTIAL BUSINESS



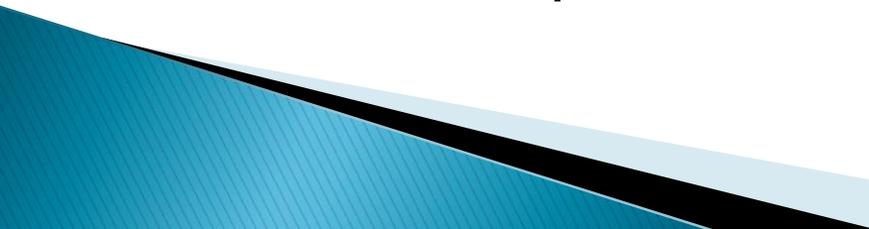
Sound issues can be “In your face”



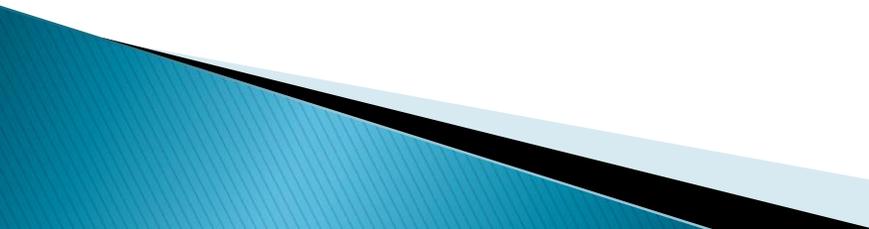
STATE LAW

- ▶ Sec. 42.01. DISORDERLY CONDUCT. (a) A person commits an offense if he intentionally or knowingly:
 - ▶ (5) makes unreasonable noise in a public place other than a sport shooting range, as defined by Section 250.001, Local Government Code, or in or near a private residence that he has no right to occupy;
 - ▶ (1) an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence; and
 - ▶ (2) a noise is presumed to be unreasonable if the noise exceeds a decibel level of 85 after the person making the noise receives notice from a magistrate or peace officer that the noise is a public nuisance.

MUNICIPAL ORDINANCES

- ▶ Generally there are (roughly speaking) three groups of municipal ordinances:
 - Those that regulate Industrial/Construction noise
 - Those that regulate music – live and emanating from cars, bars, or houses – and other human related activities, such as parties.
 - Nuisance ordinances such as barking dogs and truck compression brakes
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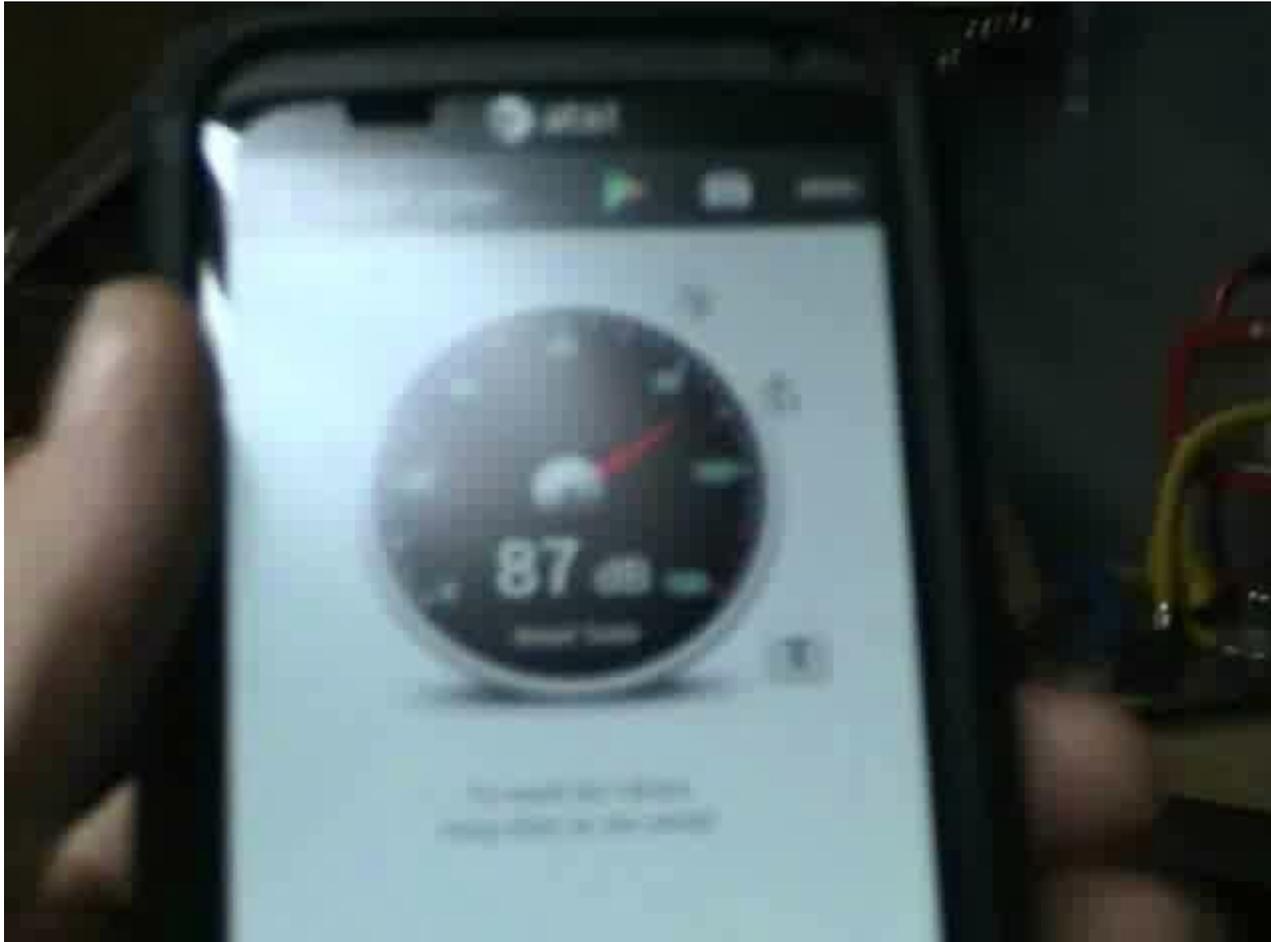
INDUSTRIAL AND CONSTRUCTION NOISE

- ▶ Most ordinances regulating industrial and construction noise set either decibel limits, time limits or both.
 - ▶ To meet constitutional certainty, decibel limits need to be determined at a fixed point – usually the business property line.
 - ▶ Time limits are generally clear – no construction (or garbage pick-up) between certain hours – But, does this apply to a homeowner at his/her residence? Lawnmowers and other power yard tools?
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Regulation of Commercial Noise

- ▶ The erection, including construction, excavation, demolition, alteration, or repair work, or the permitting or causing thereof, of any building or other structure, or the operation or the permitting or causing the operation of any tools or equipment used in construction, excavation, drilling, demolition, alteration or repair work:
 - ▶ a. Other than during the daytime on week days; or
 - ▶ b. At anytime such that the sound level at or across a real property boundary exceeds 80dBA.

DIY – NOSIER THAN YOU THINK



Does This Apply to the DIY Person?

- ▶ Construction equipment and activity. It shall be unlawful to operate any equipment or perform any outside construction or repair work on buildings, structures, roads, or projects within the city between the hours of 7:00 p.m. and 7:00 a.m. unless a special permit for such construction or repair work between such hours has been obtained from the city manager on the basis of good cause shown.

General Municipal Ordinances

- ▶ It shall be unlawful to operate any motor vehicle, radio, phonograph, sound amplifying system or perform any other act within the greenbelt area in such a way as to create noise which is so loud that it is disturbing and offensive to those persons occupying neighboring private premises.
 - ▶ Too indefinite – no objective criteria that would allow someone to determine whether or not they are in violation
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Municipal Ordinance Objective Standard

- ▶ *Noise nuisance* means any loud, irritating, vexing or disturbing sound which causes distress, annoyance, discomfort or injury to or which interferes with the comfort or repose of any person of reasonable nervous sensibilities in the vicinity of hearing thereof.
 - ▶ With a built in objective standard, courts have held that such ordinances are not vague
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Loud Parties

- ▶ Prohibited noises:
- ▶ (a) Between the hours of 10:00 p.m. and 7:00 a.m., no person shall use or operate or allow to be used or operated any musical instrument, loudspeaker, public address system, radio, tape player, disc player, television set, or other sound amplifying equipment in such a manner as to be plainly audible when crossing a property line or within a dwelling unit which is not the source of the sound.
- ▶ (b) For purposes of this section, "plainly audible" means that the information content of the sound is unambiguously communicated to the listener; examples include, but are not limited to, understanding of speech, comprehension of raised or normal voices, or comprehension of musical rhythms.

Other Noise Ordinances

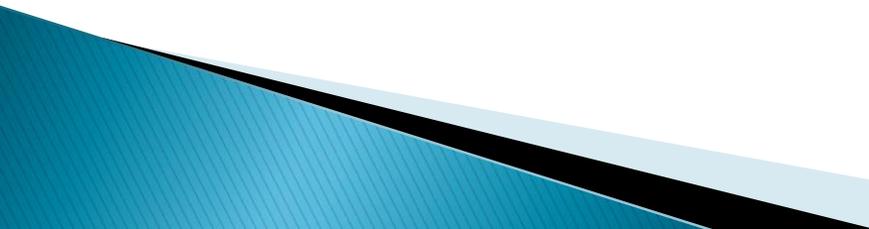
- ▶ **Animal noise:** It shall be unlawful to keep or maintain any animal or bird within residential zones of the city without providing and maintaining adequate sound control techniques to eliminate any excessive, offensive, and unnecessary noise.
 - ▶ **Compression Brakes:** It shall be unlawful for any person to activate or engage, or to have activated or engaged, any compression release engine braking system in the city limits, unless such engine braking system is connected to a lawful muffler which is adequate to and does prevent the emission of noise which is louder than normal and lawful engine operating noise.
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Some Would Say





Evidentiary Considerations

- ▶ And so who is this “reasonable person”
 - ▶ Are circumstances important?
 - ▶ What about time of day?
 - ▶ Type of noise – are some noises, by nature, more irritating than others?
 - ▶ What about undesirable content?
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Reasonable Person ??

- ▶ Homeowner Christine knows one thing for sure: “I will not have a fridge in my kitchen ever again,” she says firmly. In the new house she’s building, in Annapolis Royal, Nova Scotia, the 51-year-old is putting the refrigerator in a pantry off the kitchen and will double insulate the walls. Why? All that noise, noise, noise. Her present house has an open plan, and the sound of the fridge drives her crazy. “I tried to get used to it. I had an appliance man come to see if it was running properly.” It was – it just emitted a high-pitched whine.

Problems with Proof

- ▶ No cases on the reliability of sound meters
 - Calibration?
 - Frequency Range?
 - Accuracy at different frequencies

BUT

There's an APP for that!!

PROBLEMS WITH NEW TECH

- Does the level depend on phone, its condition, built in microphone, or App (are they the same)?
- ▶ Background Noise – is it accounted for?

THANK YOU

- ▶ QUESTIONS??
- ▶ If, at any other time, you have questions please feel free to contact me:
- ▶ Andy Quittner (830) 401-2775 or
 - aquittner@seguintexas.gov