

CITY OF SANDY OAKS, TEXAS

ORDINANCE NO. 2016-49

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANDY OAKS, TEXAS AMENDING ORDINANCE NO. 2016-44 BY PROVIDING FOR AN AFFIRMATIVE DEFENSE TO THE RULES AND REGULATIONS FOR NOISE FOR THE USE OF FIREWORKS DURING CERTAIN HOLIDAYS, REPEALING ORDINANCE NO. 2016-44 AND REPLACING IT WITH THIS ORDINANCE PROVIDING FOR RULES AND REGULATIONS FOR NOISE, DECLARING THE NOISE PROHIBITED BY THIS ORDINANCE A PUBLIC NUISANCE, PROVIDING FOR A PENALTY, PROVIDING DEFENSES, PROVIDING FOR SEVERABILITY, PROVIDING AN EFFECTIVE DATE AND PROVIDING FOR PUBLICATION.

WHEREAS, the City of Sandy Oaks, Texas ("City") is a Type A General Law municipality with the authority to adopt ordinances that are not inconsistent with State law, that are necessary for the government, interest, welfare, or good order of the municipality pursuant to section 51.012 of the Local Government Code; and

WHEREAS, section 217.002 of the Local Government Code permits a Type A municipality to abate and remove a nuisance and punish by fine the person responsible for the nuisance and define and declare what constitutes a nuisance and authorize and direct the summary abatement of the nuisance; and

WHEREAS, the City Council of the City has determined that the provisions of this Ordinance are necessary to prevent nuisances and to protect the property values and tranquility of the City's residents and maintain good order; and

WHEREAS, the City Council desires to provide an affirmative defense to the rules and regulations regarding noise if a person uses fireworks during the Fourth of July and New Year's Eve/Day holidays;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANDY OAKS, TEXAS:

SECTION 1. FINDINGS INCORPORATED. The findings set forth above are found to be true and correct and incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2. PURPOSE. The purpose of this Ordinance is to reduce nuisances through the regulation of noise within the City.

SECTION 3. DEFINITIONS. For the purposes of this Ordinance, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

- (A) "City" shall mean the City of Sandy Oaks, Texas, a Type A General Law municipality incorporated and operating in Bexar County under the laws of the State of Texas.
- (B) "City Council" shall mean the governing body of the City.
- (C) "Daytime hours" means the hours from 6:00 a.m. on one day and 11:00 p.m. the same day for properties or areas located in the city limits.
- (D) "dB(A) means the intensity of a sound expressed in decibels.
- (E) "Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss that demands immediate action.
- (F) "Emergency work" means any work performed for the purpose of: (i) preventing or alleviating the physical trauma or property damage threatened or caused by an emergency; (ii) restoring property to a safe condition following a fire, accident, or natural disaster; (iii) protecting persons or property from exposure to danger; or (iv) restoring public utilities.
- (G) "Fireworks" shall mean any combustible or explosive composition, or any substances or combination of substances, or article prepared for the purpose of producing a visible and/or audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which any such explosives are used, the type of unmanned balloons which require fire underneath to propel the same, firecrackers, lady fingers, torpedoes, skyrockets, Roman candles, dayglow bombs, sparklers, or other devices containing any such explosive substance.
- (H) "Nighttime hours" means the hours between 11:01 p.m. on one day and 5:59 a.m. the following day for properties or areas located in the city limits.
- (I) "Plainly audible" means any sound that can be detected by a person using his or her unaided hearing faculties. The detection of the rhythmic bass component of the music is sufficient to constitute a plainly audible sound.
- (J) "Property line" means with respect to single occupancy properties, the line along the ground surface and its vertical extension that separates the real property owned, leased, or occupied by one person from that owned, leased, or occupied by another person. With respect to shared occupancy properties, "property line" shall refer to the imaginary line that represents the legal limits of occupancy of any person who owns, leases, or otherwise occupies an apartment, condominium, hotel or motel room, office, or any other type of occupancy from that of other occupants.
- (K) "State" means the State of Texas.

SECTION 4. GENERAL PROHIBITIONS.

- (A) It shall be unlawful for any person to make, continue to make, or cause to be made or continued any loud, unnecessary, or unusual noise that annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others. In determining whether a noise is loud, unnecessary, or unusual, the following factors shall be considered: time of day; proximity to residential properties; whether the noise is recurrent, intermittent, or constant; the volume and intensity; whether the noise has been enhanced in volume or range by any type of electronic or mechanical means; and whether the noise is subject to being controlled without unreasonable effort or expense to the maker of the noise.
- (B) 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 that either exceeds the maximum permitted sound levels specified in this Ordinance, otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.
- (C) It shall be unlawful for any person to pour a slab, demolish a building, or utilize any commercial or industrial power tools before 6:00 a.m. or after 11:00 p.m. on any day without having notified all persons within 200 feet from the property line in relationship to the property upon which the pouring, demolition or use of tools is to take place at least five days prior to such activity. Proof of such notice shall be kept by the maker of such noise. No building permit shall be issued in the absence of such notice. This prohibition shall not apply to emergency work.
- (D) The acts enumerated in the following sections of this Ordinance, among others, are declared to be loud, disturbing, and unnecessary noises in violation of this chapter, but such enumeration shall not be deemed to be exclusive.
- (E) This section shall not apply to any public utility or the city.

SECTION 5. VEHICLES.

- (A) The use of any motor vehicle so out-of-repair or so extra-loaded that it creates any loud and unreasonable or unusual, (that is, not standard equipment for the type vehicle, or which violates State regulations for equipment or emissions), grating, grinding, rattling, or any other loud and unreasonable sound is hereby prohibited and declared to be unlawful.
- (B) No person shall operate or allow an engine of any sort of motor vehicle as defined by the Texas Transportation Code so as to "brake" or slow the same through the use of gears (commonly known as "jake braking") or by any other method which produces any noise in addition to the normal operating engine noise.

- (C) No person shall operate or allow an engine of any sort of motor vehicle, except emergency equipment or vehicles then located at a permitted public event or parade, to idle for more than one hour.
- (D) It is unlawful for any person operating or controlling a motor vehicle to operate any radio, stereo receiver, compact disc player, cassette tape player, MP3 player, or other audio device in the motor vehicle in such a manner that, when operated, it is:
 - (1) Audible in a public place or on private property other than that owned or occupied by the person at a distance of 30 feet or more from the vehicle, or
 - (2) Causes vibration that can be felt at a distance of 30 feet or more than the vehicle.
 - (3) It shall be a defense to prosecution under this section that the vehicle was owned and operated by a business that, in the required and normal course of business, uses sound making devices in a motor vehicle and the sound or vibration was being made between 8:00 a.m. and 8:00 p.m.

SECTION 6. AMPLIFIED SOUND.

- (A) 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 using any sound amplifier that is part of or connected to any speaker system, radio, stereo receiver, compact disc player, microphone, or any other sound source, when operated:
 - (1) In such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants; or
 - (2) At any time with louder volume than is necessary for convenient hearing for persons who are in the vehicle or within the property or premises in which such sound amplifier is operated and who are voluntary listeners thereto. The operation of any such sound amplifier in such a manner as to be plainly audible at a distance of 50 feet or more from a vehicle shall be presumed to be in violation of this section. The operation of any such sound amplifier in such a manner that bass sounds are plainly audible at a distance of 50 feet or more from the property line of a property or premises in which the amplification is located shall be presumed to be in violation of this section.
- (B) It is an affirmative defense to prosecution under this section that the sound source is a motor vehicle and that:
 - (1) The motor vehicle is a mobile sound stage or studio that is being used on a stationary basis at a location not situated upon any street for the purpose of providing sound, during daytime hours, for an event or function; and
 - (2) The use is in compliance with all other provisions of this Ordinance.

SECTION 7. NOISY ANIMALS

- (A) The keeping of any animal or bird that causes or makes frequent or long and continued sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of ordinary, reasonable persons of normal sensibilities and ordinary tastes, habits, and modes of living who reside in the vicinity thereof is hereby prohibited and declared to be unlawful as a sound nuisance in violation of this Ordinance, regardless of whether the sound so created by said animal or bird is within the permissible levels specified in Section 8 of this Ordinance.
- (B) In any prosecution for a violation of this section, the fact that any loud animal or bird noise which disturbed any person and which occurs in residential areas either during nighttime hours or when none of the residents who reside at the place where the animal or bird is being kept are at home, shall create a presumption that such noise was in violation of this section.
- (C) In any prosecution for a violation of this section, the fact that any animal or bird has been allowed or permitted to persistently and chronically violate this section, as demonstrated by the issuance of two or more citations and or the receipt of two or more complaints from more than one household within a two-month period shall create a presumption that such noise was in violation of this section.

SECTION 8. MAXIMUM PERMISSIBLE SOUND LEVELS.

- (A) In addition to the violations established by the preceding sections of this Ordinance, no person shall conduct, permit, or allow any activity or sound source to produce a sound discernible beyond the property on which the sound is being generated that when measured as provided in this section exceeds 85 dB(A) during daytime hours and 70 dB(A) during nighttime hours. Evidence that an activity or sound source produces a sound that exceeds the dB(A) levels specified in this section shall be prima facie evidence of a sound nuisance that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this Ordinance.
- (B) Regardless of the measurable dB(A) level established above and measured as provided in Section 9 of this Ordinance, the generator of any sound of such a nature as to cause persons occupying or using any property other than the property upon which the sound is being generated to experience physically detectable sound, vibrations or resonance at a distance of 50 feet from the source of the sound (measured as set out below) caused by the sound shall also be prima facie evidence of a sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in violation of this Ordinance.

SECTION 9. METHOD OF SOUND MEASUREMENT. Whenever portions of this Ordinance prohibit sound over a certain decibel limit, measurement shall be made with a Type 1 or Type 2 calibrated sound level meter utilizing the A-weighting scale and the slow meter response as specified by the American National Standards Institute. Measurements recorded shall be taken so as

to provide a proper representation of the sound being measured. 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. Measurements of sound generated shall be taken from the curb line of the nearest public street to the property where the sound is generated and taken toward the source of the sound.

SECTION 10. NOISE IN VIOLATION OF THIS ORDINANCE DECLARED A PUBLIC NUISANCE. It shall be unlawful for any person, firm, entity or corporation to engage in any of the prohibited acts outlined in this ordinance within the city limits as such prohibited noise and a violation of this Ordinance is declared a public nuisance.

SECTION 11. VIOLATION AND PENALTY. Any person violating a provision of this Ordinance is guilty of a Class "C" misdemeanor and upon conviction shall be fined not more than \$500.00 for each offense. Each day a person violates the provision of this Ordinance shall be considered a separate offense.

SECTION 12. DEFENSES. The following defenses shall apply to any offense established in this Ordinance, and the same must be specifically plead by anyone charged with a violation:

- (A) The emission of any sound was for the purpose of alerting persons to the existence of an emergency, danger, or attempted crime, or was produced pursuant to any safety rule or regulation of any governmental entity or agency.
- (B) The sound was produced by an authorized emergency vehicle.
- (C) The sound was produced by emergency work.
- (D) The sound was generated:
 - (1) By a parade and spectators and participants on the parade route during a lawful parade;
 - (2) By a pyrotechnic display that was inspected and approved by the city; or
 - (3) By spectators and participants of any outdoor event, fun run, race, festival, fiesta, or concert that was sponsored or co-sponsored by the city.
- (E) The sound was produced by the erection, excavation, construction, or demolition of any building or structure, including the use of any necessary tools or equipment, which activity did not produce a sound exceeding 85 dB(A) when measured from the property line of the residential property where the sound is being received.
- (F) The sound was produced by railroad equipment in operation on railroad rights-of-way.
- (G) 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

9:00 p.m. when the sound is being produced for the maintenance or upkeep of the property on which it was operated.

- (H) The sound was produced as part of a religious observance or service during daytime hours in a zone authorized for such services within the city.
- (I) The sound was produced during daytime hours by activities conducted on public parks, public playgrounds, and public or private school grounds, including, but not limited to, school athletic, band and school entertainment practice or events.
- (J) The sound was produced by fireworks during the nighttime hours on January 1st, July 4th or December 31st of any given year.

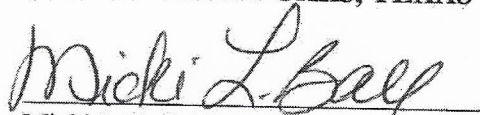
SECTION 14. SEVERABILITY. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 15. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its publication as required by section 52.011 of the Local Government Code.

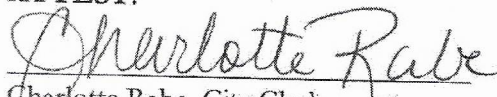
SECTION 16. PUBLICATION. The City Clerk is hereby authorized and directed to publish the caption of this Ordinance together with the penalty provision contained therein in the manner and for the length of time prescribed by law.

PASSED AND APPROVED on this 13th day of April, 2016.

CITY OF SANDY OAKS, TEXAS


Micki L. Ball, Mayor

ATTEST:


Charlotte Rabe, City Clerk