

**ORDINANCE NO. 2011-1041  
AN ORDINANCE REGULATING NOISE**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS PROVIDING RULES AND REGULATIONS FOR NOISE; REPEALING ALL ORDINANCES OR RESOLUTIONS IN CONFLICT WITH THE TERMS HEREOF; PROVIDING A PENALTY; AND PROVIDING FOR THE SEVERABILITY.**

**WHEREAS**, the City of Fulshear may enforce Ordinances necessary to protect the health, life and property and to preserve the good government, order and security of the municipality and its inhabitants; and

**WHEREAS**, the City Council of the City of Fulshear, Texas (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;

**WHEREAS**, the City Council has also taken into account the First Amendment rights of those persons who would engage in speech within the City and has determined that the measures set forth in this ordinance strike an appropriate and lawful balance protecting such First Amendment rights while protecting the City's citizens from nuisance.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS:**

**SECTION 1.0**

**PURPOSE:** The purpose of this Ordinance is to reduce nuisances through the regulation of Noise within the City.

**SECTION 2.0**

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

- 1) **Daytime hours:** Shall mean the hours from 7:00 a.m. on one day and 10:00 p.m. the same day for residential properties or areas. For nonresidential properties or areas it shall mean 6:00 a.m. on one day and 10:00 p.m. on the same day Sunday through Thursday and 6:00 a.m. on one day and midnight on the same day Friday and Saturday.
- 2) **dB{A}:** Shall mean the intensity of a sound expressed in decibels.
- 3) **Emergency:** Shall mean any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss that demands immediate action.
- 4) **Emergency work:** Shall mean 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.

- 5) **Nighttime hours:** Shall mean the hours between 10:01 p.m. on one day and 6:59 a.m. the following day for residential properties. For nonresidential areas it shall mean between 10:01 p.m. and 5:59 a.m. the next day Sunday through Thursday and 12:01 a.m. on one day and 5:59 a.m. on the same day on Friday and Saturday.
- 6) **Non-residential property/areas:** Shall mean any real property that is not included in the definition of residential property as defined in this section. Without limitation, the term includes properties that are devoted to public purposes, such as public parks.
- 7) **Plainly audible:** Means any sound that can be detected by a person using his or her unaided hearing faculties. For example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the enforcement officer need not determine the name of the song, specific words or the artist performing it. The detection of the rhythmic bass component of the music is sufficient to constitute a plainly audible sound.
- 8) **Property line:** Shall mean, 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 the term shall mean the 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.
- 9) **Residential property/areas:** Shall mean any real property that is legally habitable and that is inhabited for use as a single or multi-family dwelling.
- 10) **Streets:** Shall be defined as being in the same category as the surrounding area. In the case of residential properties/areas which are across the street from nonresidential properties/areas, the street shall be considered to be in a residential area.
- 11) **Permittee:** Means any individual to whom a permit is issued pursuant to this Ordinance.

### **SECTION 3.0**

#### **GENERAL PROHIBITIONS:**

- 1) It shall be unlawful for any person to make, continue, or cause to be made or continued any loud noise that disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others. In determining whether a noise is loud, the following factors shall be considered: time of day; proximity to residential properties/areas as defined above; 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 creator thereof.
- 2) 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 Section 17.0 of this Ordinance or, otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others. It shall be unlawful for any person to pour a slab, demolish a building, or utilize any commercial or industrial power tools before 7:00 a.m. or after 8:00 p.m. on any day without having notified all persons residing within a radius of 200 feet from the property lines of the property on which work is being performed at least ten days prior to such activity. Such notice shall be sent via Certified Mail. No building permit shall be issued in the absence of such notice. This prohibition shall not apply to emergency work.

- 3) The acts enumerated in the following sections of this article, among others, are declared to be loud, disturbing noises in violation of this article, but such enumeration shall not be deemed to be exclusive.
- 4) This section shall not apply to any public utility or public works.

#### **SECTION 4.0**

##### **VEHICLES:**

- 1) The use of any motor vehicle so out of repair or so extra loaded, that it creates any loud and unreasonable, (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.
- 2) No person shall operate an engine of any 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.
- 3) 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.
- 4) It is unlawful for any person operating or controlling a motor vehicle to operate any radio, stereo receiver, compact disc player, cassette tape player, or other similar device in the motor vehicle in such a manner that, when operated, it is:
  - a) 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
  - b) Causes vibration that can be felt at a distance of 30 feet or more from the vehicle.
  - c) It shall be a defense to prosecution under this section that a 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 5.0**

**ANIMALS:**

- 1) 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 chapter, regardless of whether the sound so created by said animal or bird is within the permissible levels specified in Section 17.0 of this Ordinance.
- 2) 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 three or more citations and/or the receipt of three or more complaints from more than one household within a sixty day (60) period shall create a rebuttable presumption that such noise was in violation of this article.

**SECTION 6.0**

**AMPLIFIED SOUND:**

- 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 using any sound amplifier that is part of or connected to any speaker system, radio, stereo receiver, compact disc player, cassette tape player, microphone, or any other sound source, when operated:
  - a) In such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants, or
  - b) 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 30 feet or more from a vehicle shall be presumed to be a violation of this section. The operation of any such sound amplifier in such a manner that sounds are plainly audible at a distance of 60 feet or more from the property line of a property or premises in which the amplification is located shall be presumed to be a violation of this section.
- 2) It is an affirmative defense to prosecution under this section that the sound source is a motor vehicle and that:
  - a) 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
  - b) The use is in compliance with all other provisions of this Ordinance.

**SECTION 7.0**

**SOUND AMPLIFICATION PERMIT REQUIRED:**

- 1) No person shall use or cause to be used any loudspeaker, loudspeaker system, sound amplifier, or any other machine or device that produces, reproduces, or amplifies sound outside of buildings or other enclosed structures, without first obtaining a permit to do so. No permit is required for any use not exceeding the said permissible levels. The permit shall be granted only for the amplification of music or human speech, or both.
- 2) The City Council may, in their discretion, issue such permit upon a showing of good cause for such permit, but under no condition shall such permit be granted for a period of time of more than one year. The City Council may impose any reasonable condition upon such permit, including but not limited to prohibiting the operation of the equipment during any hours between 10:00 p.m. and 7:00 a.m. daily. The city council may, in its discretion, extend any permit, such extensions to be for any time not exceeding one year.
- 3) The permit shall contain the name of the permittee, the type of equipment to be used, the dates for which it is in effect, the place where the same is to be used and the terms of any restrictions, including any restriction on the hours of operation of the equipment. The permit shall be posted in a public place on the premises at all times.

**SECTION 8.0**

**PERMIT APPLICATION REQUIRED:** Any person or organization required under Section 7.0 to obtain a permit to operate an amplifier within the City must file a written application for permit with the City, which application shall provide the following information:

- 1) Applicant's name, telephone number, address, birth date, physical description, full face photograph and Driver's license number and state; and
- 2) If the applicant is using the amplification equipment for any commercial, charitable or political organization, the name, telephone number, address of such organizations and contact person; and
- 3) The time, date and location at which such equipment is to be used; and
- 4) The type and description of the equipment to be used; and
- 5) Description (year, make, type) and license plate number and state of all vehicles to be used if the application is for the operation of a mobile system or sound truck; and
- 6) Applicant must provide original identifying documents to the City Administrator upon request.

**SECTION 9.0**

**PERMIT CONDITIONAL:** The application shall contain express provisions stating that issuance of a permit shall be conditioned upon compliance with all requirements of this Ordinance and other applicable laws.

### **SECTION 10.0**

**FEES:** All applicants shall pay a permit fee to the City of \$20.00 for the initial application and for any subsequent renewals.

### **SECTION 11.0**

#### **PERMIT DENIAL:**

- 1) A copy of the application for permit will be referred to the City Administrator and the Police Department who will undertake an investigation of the applicant's record and background, such as shall be reasonably necessary to protect the public. An application for permit under this Ordinance may be denied where:
  - a) Required application information is incomplete or incorrect;
  - b) Applicant is currently wanted on warrant for arrest;
- 2) If the City Administrator denies a permit on one or any of the aforementioned grounds, applicant may appeal this decision in writing to the City Council, which may affirm, modify or reverse the decision of the City Administrator or designee. An appeal to the City Council may be perfected by written notice to the City Administrator or designee delivered within ten calendar days of the date the City Administrator's or designee's decision is delivered to the permittee. Any decision of the City Administrator or designee which is not properly appealed shall be final.

### **SECTION 12.0**

**PERMITS NONTRANSFERABLE:** Permits issued under the provisions of this Ordinance are not transferable in any situation and will be clearly marked "Not transferable."

### **SECTION 13.0**

#### **PERMIT SUSPENSION AND REVOCATION:**

- 1) The City Administrator or designee may, upon documented complaint or violation of law, suspend and confiscate a permit issued under this Ordinance.
- 2) Persons or organizations whose permits are suspended have three business days during which to request an administrative review of the suspension by the City Administrator or designee. If request for administrative review is not made within three business days, the permit is revoked.
- 3) Upon permittee's request, the City Administrator or designee shall provide the permittee with written notice containing particulars of any and all complaints against him or her, and the time, date and place for an administrative review of the suspension.
- 4) The City Administrator or designee will conduct an administrative review to determine whether the permit shall be restored or revoked.

- 5) After notice and review, the City Administrator or designee may revoke any permit issued under this Ordinance for the following reasons:
  - a) Fraudulent statements, omissions on permit application or in conduct of permitted activities; and/or
  - b) Continuing violation of the Ordinance.
- 6) If the City Administrator or designee revokes a permit, applicant may appeal this decision in writing to the City Council, which may affirm, modify, or reverse the decision. An appeal to the City Council may be perfected by written notice to the City Administrator delivered within ten calendar days of the date the City Administrator's or designee's decision is delivered to the permittee. Any decision of the City Administrator or designee which is not properly appealed shall be final.
- 7) Revocation of any permit shall bar the permittee from eligibility for any person under this Ordinance for a period of one year.

#### **SECTION 14.0**

##### **MAXIMUM PERMISSIBLE SOUND LEVELS:**

- 1) In addition to the violations established by the preceding sections of this article, no person shall conduct, permit, or allow any activity or sound source to produce a sound discernible beyond 60 feet of the property on which the sound is being generated that when measured as provided in section 16.0 of this Ordinance exceeds 85 dB(A) during daytime hours and 70 dB(A) during nighttime hours for the respective areas described above.
- 2) Any sound that exceeds the dB(A) levels set forth in this section under the conditions and measurement criteria set forth in this article is a violation of this chapter. 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 article.

#### **SECTION 15.0**

**METHOD OF SOUND MEASUREMENT:** Whenever portions of this article 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 Standards Association. 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. Traffic, aircraft, and other transportation noise shall not be considered in taking measurements except where such background noise interferes with the noise being measured and cannot reasonably be distinguished from the primary noise. 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. In the event that there is not at least 60 feet of distance from the building in which sound is being generated and from which sound is being measured, then measurements shall be taken

from the street curb line opposite the said building of the nearest public street to the property where the sound is generated.

**SECTION 16.0**

**VIOLATION AND PENALTY:** Any person violating the provisions 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 provisions of this Ordinance shall be considered a separate offense.

**SECTION 17.0**

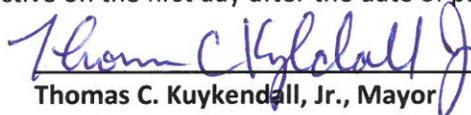
**REPEALING CLAUSE:** All provisions in conflict with the provisions of this Ordinance shall be, and the same are hereby repealed, and all other provisions not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**SECTION 18.0**

**SEVERABILITY CLAUSE:** That if any provision, word, sentence, paragraph, clause, phrase or section of this Ordinance or its application to any person or circumstances is adjudged or held invalid, void or unconstitutional, the invalid, void or unconstitutional portion shall not affect the validity of the remaining portions of this ordinance which shall remain in full force and effect.

**SECTION 19.0**

**EFFECTIVE DATE:** This Ordinance shall be effective on the first day after the date of passage.

  
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Thomas C. Kuykendall, Jr., Mayor

ATTEST:  
  
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D. Gordon Offord, City Secretary