

ORDINANCE NUMBER 986

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS, AMENDING THE CODE OF ORDINANCES BY ADDING CHAPTER 105. NOISE REGULATION; PROVIDING FOR THE REGULATION OF NOISE WITHIN THE CITY; PROVIDING THE REPEAL OF ORDINANCES AND PORTIONS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTY; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of Commissioners of the City of Burkburnett has determined that loud noises are tolerated during the day but are disruptive and intrusive during the evening and nights;

WHEREAS, the regulation of noise within the City serves a public purpose by providing for reasonable noise limits for the peace and comfort of the community;

WHEREAS, since the City does not possess equipment necessary to monitor the levels of sound, the regulation of noise by time and source of the noise is in the best interest of the citizens of Burkburnett;

WHEREAS, Texas Local Government Code, Sec. 217.022 authorizes the Board of Commissioners to prevent, to the extent practicable, any nuisance within the city limits and shall have each nuisance removed at the expense of the person who is responsible for the nuisance or who owns property on which the nuisance exists; and

WHEREAS, the Board of Commissioners has determined that the adoption of these noise regulations is necessary to stop unreasonable noise for the health, safety, and welfare of citizens of Burkburnett.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BURKBURNETT, TEXAS THAT:

Part 1. Enacted.

THAT the Code of Ordinances for the City of Burkburnett is hereby revised by adding Chapter 105: Noise Regulation, which shall read as follows:

CHAPTER 105: NOISE REGULATION

§ 105.01 DEFINITIONS.

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

Daytime hours means the hours from 7:00 a.m. on one day and 7:00 p.m. the same day.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss that demands immediate action.

Emergency work means any work performed for the purpose of:

- (1) Preventing or alleviating the physical trauma or property damage threatened or caused by an emergency;
- (2) Restoring property to a safe condition following a fire, accident, or natural disaster;
- (3) Protecting persons or property from exposure to danger; or
- (4) Restoring public utilities.

Nighttime hours means the hours between 7:01 p.m. on one day and 6:59 a.m. the following day.

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 police 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.

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, the term shall mean 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.

§ 105.02 PENALTY; ADDITIONAL REMEDIES.

(A) Any person who violates any provision of this Chapter is guilty of an offense and, upon conviction thereof, shall be punished by a fine of not less than \$1.00 nor more than \$500.00. For continuous noise, each hour or portion thereof in which any violation shall occur shall constitute a separate offense. For a noise that lasts less than one minute, each violation shall constitute a separate offense.

(B) Enforcement hereunder shall not require the pleading or proving of any culpable mental state.

(C) A violation of this Chapter is a nuisance. The prosecution of an offense under this Chapter does not limit the City's right to abate the nuisance, including the use of injunctive or other civil relief.

§ 105.03 DEFENSES.

The following defenses shall apply to any offense established in this Chapter, and the same must be specifically pled 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 musical instrument at a lawfully scheduled stadium event. A horn from which sound is not produced by the breath of the individual playing such musical instruction is not considered a musical instrument for the purpose of this defense;

(2) by a parade and spectators and participants on the parade route during a lawful parade authorized by the City;

(3) by spectators and participants at lawfully scheduled amphitheater event;

(4) by patrons and participants using cannons and gunfire during historical battle re-enactment for which a pyrotechnic permit was obtained and the explosives were inspected by the fire marshal;

(5) by a pyrotechnic display that was approved by the City; or

(6) 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.

(F) The sound was produced by aircraft, in flight or in operation at any airport, or railroad equipment in operation on railroad right-of-way.

(G) The sound was produced by operating or permitting the operation of any mechanical power tools, lawn or garden tools, 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 generated as authorized under the terms of a permit.

(I) The sound was produced by church bells or church chimes when used as part of a religious observance or service during daytime hours.

(J) 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 Burkburnett Independent School District athletic, band, and school entertainment practice or events.

§ 105.04 GENERAL PROHIBITIONS.

(A) It shall be unlawful for any person to make or operate or cause to be made any loud, unnecessary or disturbing noise that annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of neighboring person(s) of ordinary sensibilities. In determining whether a noise is loud, unnecessary, or disturbing, the following factors shall be considered: time of day, proximity to residential properties or areas as defined above; whether the noise is recurrent, intermittent, or constant; the volume and intensity; where 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.

(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 unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of person(s) of ordinary sensibilities.

(C) It shall be unlawful for any person, between the hours of 10:00 p.m. and 7:00 a.m. the following morning, in either a public or private place or house in the City, to create, make or cause to be made upon musical instruments, horns or bugles, or by any other means, any loud noise which unreasonably disturbs others in the vicinity of any such public or private place or house.

(D) 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 who would be entitled to notice of a zoning change under the city zoning regulations as may be amended from time to time in relation to the property upon which the pouring, demolition or use of tools is to take place at least ten (10) days prior to such activity. Such notice shall be sent in the same manner as set out in the zoning regulations. No building permit shall be issued in the absence of such notice. This prohibition shall not apply to emergency work or city public works or utility crews.

(E) It shall be unlawful for any person to operate any gravel pit, rock crusher, or other machinery for the separation, gathering, grading, loading, or unloading of sand, rock, or gravel within 600 feet of any private residence, church or hospital in the City during nighttime hours if the operation of such plant or machinery is attended with loud noise or noises reasonably disturbing to neighboring person(s) of ordinary sensibilities.

(F) It shall be unlawful for any person to make or allow the making of noises including, but not limited to, the following: barking dog(s); gas or electric motors; car alarm; vehicle exhaust;

engine braking; radios, boom boxes, musical instruments, and other devices which produce, reproduce or amplify sound; the cries of peddlers, hawkers, and vendors; or any other noise during nighttime in a residential which can be heard beyond the real property line of the premises from which the noise is originating.

(G) The acts enumerated in the following sections of this Chapter, 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.

(H) This Chapter shall not apply to any public utility or public works.

§ 105.05 NOISY VEHICLES; IDLING VEHICLES.

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.

§ 105.06 AMPLIFIED SOUND.

(A) Restrictions.

(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.

(2) 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) Defenses. 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 Chapter and any other regulations of the City.

PART II: REPEALER

All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective, which are inconsistent or are in conflict with the terms and provisions contained in this Ordinance, are hereby repealed only to the extent of any such conflict.

PART III: SEVERABILITY

It is hereby declared to be the intention of the Board of Commissioners that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

PART IV: COMPLIANCE WITH TEXAS OPEN MEETINGS ACT

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PART V: PUBLICATION

The City Clerk is authorized and directed to publish the caption and penalty prescribed by this Ordinance in accordance with State law.

PART VI: EFFECTIVE DATE

This Ordinance shall take effect after publication in accordance with State law.

PASSED AND APPROVED THIS 16TH DAY OF NOVEMBER 2020.

Carl Law, Mayor

ATTEST:

Margie Poole, City Clerk