

ORDINANCE NO. 1021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLUM GROVE, TEXAS, ORDAINING AND APPROVING PROVISIONS RELATING TO NOISE AND SOUND LEVEL REGULATION AND CONTROL IN THE CITY LIMITS OF THE CITY OF PLUM GROVE; PROVIDING DEFINITIONS; PROHIBITING NOISY VEHICLES, AMPLIFIED SOUND, AND ANIMALS AND BIRDS; ESTABLISHING PERMISSIBLE SOUND LEVELS AND METHODS OF SOUND MEASUREMENT; REQUIRING PERMITS FOR USE OF OUTDOOR SOUND AMPLIFICATION EQUIPMENT; PROVIDING DEFENSES; PROVIDING A FINE NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00) UPON CONVICTION OF A VIOLATION OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE PUBLICATION THEREOF; EFFECTIVE DATE AND OTHER RELATED MATTERS.

WHEREAS, the City Council of the City of Plum Grove has determined that there is a need for establishing a basic level of regulations for the emission of noise and sound levels, to help in protecting the users of property who are in close proximity to others who are creating noise or an excessive level of sound from the harmful effects and inconvenience of such sounds and to help promote peacefulness within the City; and

WHEREAS, the City Council of the City of Plum Grove has found that the following regulations will promote the health, safety and welfare of the citizens and persons within the City;

WHEREAS, the City of Plum Grove, Liberty County, Texas ("City") is empowered to adopt an ordinance, act, law, or regulation that is necessary for the government, interest, welfare, or good order of the municipality as a body politic;

WHEREAS, notice of the agenda for this meeting, was given in accordance with law by posting the same at the place reserved and designated for notices of public meetings and public activities and prior to the adoption of this ordinance; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLUM GROVE TEXAS:

SECTION 1. Findings.

The foregoing recitals are hereby found to be true and correct and are hereby adopted as findings of fact and conclusions of law by the City Council, and these and made a part hereof for all purposes.

SECTION 2. Definitions.

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

Daytime hours shall mean the hours from 7:00 am. on one day and 10:00 p.m. the same day.

dB(A) shall mean the intensity of a sound expressed in decibels.

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

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.

Nighttime hours shall mean the hours between 10:01 p.m. on one day and 6:59 a.m. the following day.

Nonresidential property 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 have been developed other than as residential properties, properties that are undeveloped, and properties that are devoted to public purposes, such as public streets and parks.

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 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.

Residential property shall mean any real property developed and used for human habitation that contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, unless such premises are actually occupied and used primarily for purposes other than human habitation.

Sound nuisance shall mean any sound that either exceeds the maximum permitted sound levels specified in section 7 of this Ordinance, or for purposes of sections 4, 5 and 6 of this Ordinance, otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.

SECTION 3. General Prohibitions.

It shall be unlawful for any person to make, continue, 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 structures; 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; whether the noise is subject to being controlled without unreasonable effort or expense

to the creator thereof; and whether the noise exceeds specified dB(A) levels enumerated in the following sections.

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 7 of this Ordinance or, for purposes of sections 4, 5 and 6 of this Ordinance, otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others.

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.

SECTION 4. Noisy Vehicles Generally.

The use of any motor vehicle so out of repair, so loaded, or so noisy that it creates any loud and unreasonable grating, grinding, rattling, or any other loud and unreasonable sound is hereby prohibited and declared to be unlawful. It shall be unlawful for any person to discharge into the open air of the exhaust, except through a muffler, or other device, which will effectively and efficiently prevent loud and raucous noises.

SECTION 5. Amplified Sound.

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: (i) in such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants, or (ii) 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 from a vehicle shall be presumed to be violative of this section. The operation of any such sound amplifier in such a manner that bass sounds are plainly audible at a distance of 300 feet from the property line of a property or premises in which the amplification is located shall be presumed to be violative of this section.

It is an affirmative defense to prosecution under this section that the sound source is a motor vehicle and that (i) 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 (ii) the use is in compliance with all other provisions of this chapter, including but not limited to section 9 of this Ordinance, if applicable.

SECTION 6. Noisy Animals and Birds.

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 7 of this Ordinance.

SECTION 7. Maximum Permissible Sound Levels.

In addition to the violations established by the preceding sections of this chapter, no person shall conduct, permit, or allow any activity or sound source to produce a sound discernible at any location beyond the property lines of the property on which the sound is being generated that when measured as provided in section 8 of this Ordinance exceeds the applicable dB(A) level listed below for the property on which the sound is received:

Residential property:

65 dB(A) during daytime hours.

(b) 58 dB(A) during nighttime hours.

Nonresidential property: 68 dB(A) at all times.

Any sound that exceeds the dB(A) levels set forth in this section under the conditions and measurement criteria set forth in this chapter 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 chapter.

SECTION 8. Method of Sound Measurement.

Whenever portions of this chapter prohibit sound over a certain decibel limit, measurement shall be made with a Type I 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 (A.N.S.I. S1.4- 1984/85A). 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 property line of the nonresidential property or residential property where the sound is received to the source of the sound.

SECTION 9. Permit Required for Use of Outdoor Sound Amplification Equipment.

- (a) 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 in a manner that exceeds the levels specified in section 7, when measured from the property where the sound is being received, without first obtaining a permit to do so. The permit shall be granted only for the amplification of music or human speech, or both. The permit:

- (1) May be obtained by making application to City staff.
- (2) Requires payment of a \$30.00 fee for the administrative costs of issuing the permit or a sworn statement of inability to pay the fee.
- (3) Is valid for one 14 hour period between the hours of 8:00 a.m. and 10:00 p.m.
- (4) Shall not be issued to the same or any other person for the same location more than twice during any 30 day period. In the case of a sound truck, location shall relate to the area traversed by the truck in one day.
- (5) Shall not authorize, allow, or otherwise permit the production, reproduction, or amplification of sound that exceeds 75 dB(A) when measured from the property line of the nearest receiving property.

(b) The permit application required to be filed pursuant to this section shall contain the following information:

- (1) The date of the application and the date and hours for which the permit is requested
- (2) The name and address of the applicant.
- (3) The name and address of the person who will have charge of the sound amplifying equipment.
- (4) The purpose for which the sound equipment will be used.
- (5) The address and a description of the location where the sound equipment will be used.
- (6) A description of the type of sound amplifying equipment to be used.

SECTION 10. Defenses.

The following defenses shall apply to any offense established in this chapter:

- (a) The emission of any sound was for the purpose of alerting persons to the existence of an emergency, danger, or attempted crime.
- (b) The sound was produced by an authorized emergency vehicle.
- (c) The sound was produced by emergency work.
- (d) The sound was generated:

- (1) At a lawfully scheduled stadium event;
 - (2) By a parade and spectators and participants on the parade route during a lawful parade;
 - (3) By spectators and participants at lawfully scheduled amphitheater event;
 - (4) By patrons and participants using cannons and gunfire during historical battle re enactments for which a pyrotechnic permit was obtained and the explosives were inspected by the fire marshal;
 - (5) By a pyrotechnic display that was inspected and approved by the fire marshal; or
 - (6) By spectators and participants of any outdoor event; fun run, race, festival, fiesta, or concert that was sponsored or cosponsored by the city and in full compliance with a permit issued 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, conducted between the hours of 7:00 a.m. and 8:00 p.m., 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 aircraft in flight or in operation at an airport, or 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 8:00 p.m., provided the device did not produce a sound exceeding 85 dB(A) when measured from the property line of the nearest residential property where the sound is being received and was used 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 issued under section 9 of this Ordinance.
- (i) The sound was produced by the operation of any air conditioning unit that did not produce a sound exceeding 65 dB(A) on residential property or 75 dB(A) on nonresidential property, when measured at or near 15 feet from the air conditioning unit producing the sound being measured.
- (j) The sound was produced by church bells or church chimes when used as part of a religious observance or service during daytime hours, provided the sound did not cumulatively exceed five minutes duration in any one hour period.

- (k) 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 and school entertainment events.

SECTION 11. Penalty.

Any person who violates any provision of this Ordinance is guilty of an offense and, upon conviction thereof, shall be punished by a fine of not more than \$500.00. Each hour or portion thereof in which any violation shall occur shall constitute a separate offense.

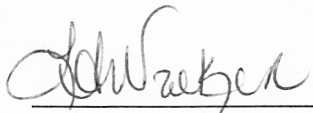
In addition, any violation of this Ordinance may be deemed a nuisance and the imposition of any fine hereunder shall not abrogate the right of the City to cause the abatement of any nuisance, including the use of injunctive relief.

SECTION 12. All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided however, that such repeal shall be only to the extent such inconsistency of other ordinances regulating and governing the subject matter covered by this ordinance.

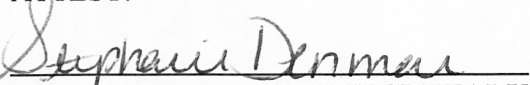
SECTION 13. If any provisions, section, exception, subsection, paragraph, sentence, clause or phrase of this ordinance or the application of same to any person or set of circumstances, shall for any reason be held unconstitutional, void and invalid, such provision of this ordinance or their application to other sets of circumstance and to this end al provisions of this ordinance are declared to be severable.

SECTION 14. The City Secretary shall cause notice of the adoption of this ordinance to be given by publication of the caption hereof in a newspaper of general circulation within the City. This ordinance shall be effective fifteen (15) days following adoption and upon publication as herein required.

PASSED, APPROVED and ADOPTED by the City Council of the City of Plum Grove, Liberty County, Texas on this, the 23 day of February 2014

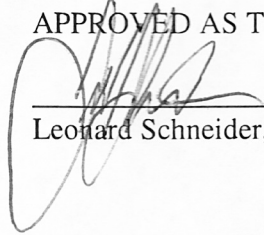


L.A. Walker, **MAYOR**

ATTEST:


Stephanie Denman, **CITY SECRETARY**

APPROVED AS TO FORM:



Leonard Schneider, City Attorney