

ORDINANCE 139-042007

AN ORDINANCE OF THE CITY OF GARDEN RIDGE, TEXAS; CREATING A NOISE PROHIBITION ORDINANCE; CREATING MINIMUM AND MAXIMUM PENALTIES FOR NOISE VIOLATIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.

WHEREAS, the City Council for the City of Garden Ridge has determined that a need exists to establish noise and sound regulations; and

WHEREAS, the use of amplified sound devices in public places creates a public nuisance, interfering with the quiet enjoyment of parks, waterways and public spaces; and

WHEREAS, the City of Garden Ridge wishes to protect its citizens from loud and excessive sounds and noises that disturb the peace and quiet of their neighborhoods; and

WHEREAS, the Council has decided that sound and noise levels should be established by ordinance in order to preserve the peace and quiet of our residential and commercial communities and neighborhoods.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARDEN RIDGE, TEXAS:

I.

SECTION ONE. Purpose.

This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of the City of Garden Ridge through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity.

SECTION TWO. Findings.

- (a) Loud and raucous noise degrades the environment of the City of Garden Ridge to a degree that it:
- (1) May be harmful to the health, welfare, and safety of its inhabitants and visitors;
 - (2) May interfere with the comfortable enjoyment of life and property;
 - (3) May interfere with the well being, tranquility, and privacy of the home; and
 - (4) May cause and aggravate health problems.

(b) Both the effective control and the elimination of loud and raucous noise are essential to the health and welfare of the City of Garden Ridge's inhabitants and visitors, and to the conduct of the normal pursuits of life, including recreation, work, and communication.

(c) The use of sound amplification equipment creates loud and raucous noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace, and freedom of inhabitants of, and visitors to, the City of Garden Ridge.

(d) Certain short-term easing of noise restrictions is essential to allow the construction and maintenance of structures, infrastructure, and other elements necessary for the physical and commercial vitality of the City of Garden Ridge.

SECTION THREE. Definitions.

"Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

"Emergency Work" means any work performed for the purpose of preventing or alleviating physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.

"City Administrator" means the City Administrator of the City of Garden Ridge or the City Administrator's designee.

"Noise Sensitive Area" includes, but is not limited to, a posted area where a school, hospital, nursing home, church, court, public library, or similar institution is located.

"Person" means any individual, firm, association, partnership, joint venture, or corporation.

"Public right-of-way" means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by a government entity.

"Public space" means any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

"Residential area" means any real property which contains a structure or building in which one or more persons reside, provided that the structure or building is properly zoned, or is legally nonconforming, for residential use in accordance with the terms and maps of the City of Garden Ridge's zoning ordinance.

"Sunset" means the time in the evening at which the sun begins to fall below the horizon as determined by the U.S. Naval Observatory for the geographic location of San Antonio, Texas.

SECTION FOUR. General Prohibition.

- (a) No person shall make, continue, or cause to be made or continued:
 - (1) Any unreasonably loud or raucous noise; or
 - (2) Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, within the jurisdictional limits of the City of Garden Ridge; or
 - (3) Any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the neighborhood from which said noises emanate, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.

- (b) Factors for determining whether a sound is unreasonably loud and raucous include, but are not limited to, the following:
 - (1) The proximity of the sound to sleeping facilities, whether residential or commercial;
 - (2) The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
 - (3) The time of day or night the sound occurs;
 - (4) The duration of the sound; and
 - (5) Whether the sound is recurrent, intermittent, or constant.

SECTION FIVE. Noises Prohibited.

The following acts are declared to be per se violations of this Ordinance. This enumeration does not constitute an exclusive list:

- (a) **Unreasonable Noises:** The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous or unusual noise, disturbance, commotion or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, park, or other place or building. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice for such businesses are exempted from this provision.

- (b) **Vehicle Horns, Signaling Devices, and Similar Devices:** The sounding of any horn, signaling device, or other similar device, on any automobile, motorcycle, or other vehicle on any right-of-way or in any public space of the City of Garden Ridge, for more than ten (10) consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt from this prohibition.

(c) Non-Emergency Signaling Devices: Sounding or permitting sounding any amplified signal from any bell, chime, siren, whistle or similar device, intended primarily for non-emergency purposes, from any place for more than ten (10) consecutive seconds in any hourly period. The reasonable sounding of such devices by houses of religious worship or by the City of Garden Ridge for traffic control purposes are exempt from the operation of this provision.

(d) Emergency Signaling Devices: The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided in Subsections (1) and (2), below.

(1) Testing of an emergency signaling device shall occur between 7:00 a.m. and 7:00 p.m. Any testing shall use only the minimum cycle test time. In no case shall such test time exceed five (5) minutes. Testing of the emergency signaling system shall not occur more than once in each calendar month.

(2) Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, shall terminate within fifteen (15) minutes of activation unless an emergency exists. If a false or accidental activation of an alarm occurs more than twice in a calendar month, the owner or person responsible for the alarm shall be in violation of this Ordinance.

(e) Radios, Televisions, Boomboxes, Phonographs, Stereos, Musical Instruments and Similar Devices: The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by, or is plainly audible at a distance of 50 feet from any person in a commercial, industrial area, or public space. The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs the peace, quiet, and comfort of neighbors in residential or noise sensitive areas, including multi-family or single-family dwellings.

(f) Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices: The unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, Sunday through Thursday, and 10:00 p.m. and 10:00 a.m. on weekends, Friday through Saturday, and holidays in the following areas:

(1) Within or adjacent to residential or noise-sensitive areas;

- (2) Within public space if the sound is plainly audible across the real property line of the public space from which the sound emanates, and is unreasonably loud and raucous.

This shall not apply to any public performance, gathering, or parade for which a permit has been obtained from the City of Garden Ridge. This shall also not apply to any authorized gathering taking place in or on the grounds of the City of Garden Ridge Community Center until 11:00 p.m.

(g) Yelling, Shouting, and Similar Activities: Yelling, shouting, hooting, whistling, or singing in residential or noise sensitive areas or in public places, between the hours of 10:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities.

(h) Animals and Birds: Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns, controls or otherwise cares for the animal or bird. Sounds made by animals or birds in animal shelters, kennels, veterinary hospitals, pet shops or pet kennels, [licensed under and in compliance with any required local, state or federal licensing and permitting regulations] are exempt from this subsection.

(i) Loading or Unloading Merchandise, Materials, Equipment: The creation of unreasonably loud, raucous, and excessive noise in connection with the loading or unloading of any vehicle at a place of business or residence.

(j) Construction or Repair of Buildings, Excavation of Streets and Highways: The construction, demolition, alteration or repair of any building or the excavation of streets and highways other than between the hours of 7:00 a.m. and sunset plus thirty (30) minutes. In cases of emergency, construction or repair noises are exempt from this provision. In non-emergency situations, the Building Inspector/City of Garden Ridge Administrator may issue a permit, upon application, if the Building Inspector/City of Garden Ridge Administrator determines that the public health and safety, as affected by loud and raucous noise caused by construction or repair of buildings or excavation of streets and highways between the hours of sunset plus thirty (30) minutes and 7:00 a.m. will not be impaired, and if the Building Inspector/City of Garden Ridge Administrator further determines that loss or inconvenience would result to a party in interest. The permit shall grant permission in non-emergency cases for a period of not more than three (3) days. The permit may be renewed once for a period of three (3) days or less.

(k) Noise Sensitive Areas - Schools, Courts, Churches, Hospitals, and Similar Institutions: The creation of any unreasonably loud and raucous noise adjacent to any noise sensitive area while it is in use, which unreasonably interferes with the workings of the institution or which disturbs the persons in these institutions; provided that conspicuous signs delineating the boundaries of the noise sensitive area are displayed in the streets surrounding the noise sensitive area.

(l) Blowers, and Similar Devices: In residential or noise sensitive areas, between the hours of sunset plus thirty (30) minutes and 7:00 a.m., the operation of any noise-creating blower, power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, provided that the noise is unreasonably loud and raucous and can be heard across the property line of the property from which it emanates.

(m) Commercial Establishments Adjacent to Residential Property: Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under the control of the establishment, between the hours of 10:00 p.m. and 7:00 a.m. which is plainly audible at a distance of five (5) feet from any residential property.

SECTION SIX. Exemptions.

Sounds caused by the following are exempt from the prohibitions set out in Section Five and are in addition to the exemptions specifically set forth in Section Five:

(a) Motor vehicles on traffic ways of the City of Garden Ridge provided that the prohibition of Section Five (b) continues to apply.

(b) Repairs of utility structures which pose a clear and immediate danger to life, health, or significant loss of property.

(c) Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, provided that the prohibition contained in Section Five (d) continues to apply.

(d) The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work or as a safety device in the backing of any vehicle or equipment.

(e) Repairs or excavations of bridges, streets or highways by or on behalf of the City of Garden Ridge, the State, or the federal government, between the hours of sunset plus thirty (30) minutes and 7:00 a.m., when public welfare and convenience renders it impractical to perform the work between 7:00 a.m. and sunset plus thirty (30) minutes.

(f) Outdoor School and Playground Activities. Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to, school athletic and school entertainment events.

(g) Other Outdoor Events. Outdoor gatherings, public dances, shows and sporting events, and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority.

SECTION SEVEN. Enforcement.

(a) The following individuals shall enforce this Ordinance: The City of Garden Ridge Police Department and its officers will have primary responsibility for the enforcement of the noise regulations contained herein. Nothing in this Ordinance shall prevent the City of Garden Ridge Police Department and its officers from obtaining voluntary compliance by way of warning, notice or education.

(b) If a person's conduct would otherwise violate this Ordinance and consists of speech or communication; of a gathering with others to hear or observe speech or communication; or of a gathering with others to picket or otherwise express in a non-violent manner a position on social, economic, political or religious questions; the person must be ordered to, and have the opportunity to, move, disperse, or otherwise remedy the violation prior to arrest or a citation being issued.

SECTION EIGHT. Penalties.

(a) A person who violates a provision of this Ordinance is guilty of a misdemeanor which is punishable by a fine not less than \$100.00 and not to exceed \$500.00

(b) Each occurrence of a violation, or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.

II.

This Ordinance shall be cumulative of all provisions of ordinances of the City of Garden Ridge, Texas, except where the provisions of the Ordinance are in direct conflict with the provisions such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

III.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are 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 and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

IV.

This ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

PASSED AND APPROVED this 4th day of April 2007.

CITY OF GARDEN RIDGE, TEXAS

JAY FEIBELMAN, MAYOR

ATTEST:

LINDA KNOWLSON, CITY SECRETARY

Approved as to form:

George E. Hyde, City Attorney