



City of Orchard

ORDINANCE NO. 103- 2014

AN ORDINANCE OF THE CITY OF ORCHARD, TEXAS, PROVIDING REGULATIONS RELATING TO NOISE AND SOUND LEVEL CONTROL WITHIN THE CITY LIMITS OF THE CITY; ADOPTING DEFINITIONS, GENERAL PROHIBITIONS AND EXEMPTIONS, AND PROVIDING FOR A VARIANCE PERMIT; PROVIDING A PENALTY OF AN AMOUNT NOT TO EXCEED \$500 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; PROVIDING FOR SEVERABILITY; AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH.

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WHEREAS, the City Council of the City of Orchard, Texas (the "City"), has determined that there is a need for establishing a basic level of regulation for the emission of noise and sound levels, to help in protecting the uses of property for those who are in close proximity to others who are creating an excessive level of noise, and to help promote peacefulness within the City; now, therefore,

WHEREAS, the City Council of the City has found that the following regulations will promote the health, safety and welfare of the citizens and persons within the City: now therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORCHARD, TEXAS,

Section 1. The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct. It is the policy of the city to minimize the exposure of citizens to excessive noise and to protect, promote and preserve the public health, comfort, convenience, safety and welfare. It is the express intent of the city to control the level of noise; to protect the sleep and repose of citizens; to promote the use, value and enjoyment of property; and to preserve the quality of the environment.

Section 2. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

All technical terminology used in this ordinance, not defined in this section, shall be interpreted in conformance with applicable American National Standards Institute (ANSI) noise specifications including, but not limited to, ANSI section 1.1-1960 and section 1.4-1971 or those from its successor publications or bodies.

A-weighted sound pressure level means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read shall be designated dB(A) or dBA.

Ambient sound level means the sound level of the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources. It is also the A-weighted sound level exceeded 90 percent of the time (L90) based on a measurement period which shall not be less than ten minutes nor more than 30 minutes.

City means the City of Orchard, the mayor, or an authorized representative of the city.

Decibel means logarithmic unit of measure used in describing the amplitude of sound; denoted to dB.

Device means any mechanism which is intended to produce, or which actually produces, noise when operated or handled.

Emergency vehicle means a motor vehicle used in response to a public calamity or to protect persons or property from an imminent danger.

Emergency work means work made necessary to restore property to a safe condition following a public calamity, work to restore public utilities or work required to protect persons or property from an imminent danger.

Gross combination weight rating (GCWR) means the value specified by the manufacturer as the recommended maximum loaded weight of a combination vehicle in cases where the trailer and tractor are separable.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle.

Motor vehicle means any vehicle propelled by mechanical power such as, but not limited to, any passenger car, truck, truck-trailer, semi trailer, camper, motorcycle, minibike, go-cart, dune buggy or racing vehicle.

Muffler means any apparatus consisting of baffles, chambers or acoustical absorbing material whose primary purpose is to transmit liquids or gases while causing a significant reduction to sound emission.

Noise means any sound which is unwanted or which causes, or tends to cause, an adverse psychological or physiological effect on human beings.

Percentile sound pressure level (unit percentile level) means the A-weighted sound pressure level that is exceeded one percent of the time in a measurement period. It is denoted L1. (Tenth percentile sound level: the A-weighted sound pressure level that is exceeded ten percent of the time in any measurement period, such as the level that is exceeded for one minute in a ten-minute period. It is denoted L10.) (Ninetieth percentile sound level: the A-weighted sound pressure level that is exceeded 90 percent of the time in any measurement period, such as the level that is exceeded for nine minutes in a ten-minute period. It is denoted L90.)

Person means any individual, firm, association, partnership, corporation or any other entity, public or private.

Property boundary means an imaginary line at the ground surface and its vertical extension which separates the real property owned or occupied by one person from that owned or occupied by another person.

Public and private projects means any activity, other than the construction or alteration of a single-family dwelling, which requires a building permit issued by the building official.

Public right-of-way means any street, avenue, boulevard, highway, alley or similar place which is owned or controlled by a public governmental entity.

Public service work means work conducted by a governmental entity in the interest of the community.

Sound means a temporal and spatial oscillation in pressure, or other physical quantity in a medium with internal forces that causes compression and rarefaction of that medium, and which propagates at finite speed to distant points.

Sound level means the weighted sound pressure level measured by the use of metering characteristic and weighted as specified in American National Standards Institute Publication S1.4-1971. The sound pressure level of a sound expressed in decibels is 20 times the logarithm to the base ten of the ratio of the pressure of the sound to the reference sound pressure of 20 micropascals. If the frequency weighting employed is not indicated, the A-weighting shall apply.

Sound level meter means an instrument, which includes a microphone, amplifier, RMS detector and integrator, time averager, output meter and weighting networks, that is sensitive to pressure fluctuations. The instrument reads sound pressure level when properly calibrated with an acoustical calibrator accurate to \pm one dB and is Type II or Type I so specified in ANSI Publication S1.4-1971 or the latest approved revision thereof.

Stationary sound source means any device, fixed or movable, which is located or used on property other than a public right-of-way.

Vibration means a temporal and spatial oscillation of displacement, velocity or acceleration in a solid material.

Vibration perception threshold means the minimum ground- or structure-borne vibrational motion necessary to cause a person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects.

Section 3. Noises prohibited.

The following sounds are hereby determined to be specific noises which can constitute a noise disturbance and a violation of this ordinance:

(1) **Animals.** Owning, keeping, possessing or harboring any animal or animals which, by frequent or habitual noise-making, unreasonably disturbs or interferes with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained. The provisions of this section shall apply to all public and private facilities, including any animal shelter or commercial kennel, which hold or treat animals.

(2) **Radios, television sets, musical instruments and similar devices.** Operating or permitting to be operated any radio receiving set, musical instrument, television, phonograph, drum or other machine or device for the production or reproduction of sound in such a manner as to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained.

(3) **Exterior loudspeakers.** Operating or permitting to be operated any loudspeaker or sound-amplifying equipment in a fixed or movable position mounted upon any vehicle in or upon any street, alley, sidewalk, park, place or public property for the purpose of commercial advertising, giving instructions, directions, talks, addresses, lectures, or transmitting music to any persons or assemblages of persons in such a manner as to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained.

(4) **Construction work.** Operating or permitting to be operated any equipment used in commercial construction, repair, alteration or demolition work on buildings, structures, streets, alleys or appurtenances thereto, between the hours of 10:00 p.m. and 7:00 a.m. the following day, or in such a manner as to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained.

(5) **Power equipment.** Operating or permitting to be operated any power equipment in residential zones outdoors between the hours of 10:00 p.m. and 7:00 a.m. the following day, or in

such a manner as to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained.

(6) ***Enclosed places of public entertainment.*** Operating or permitting to be operated in any place of public entertainment any loudspeaker or other source of sound which produces, at a point that is normally occupied by the customer, maximum sound pressure levels of 100 dBA as read on a sound level meter, or in such a manner as to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained.

(7) ***Powered model mechanical devices.*** The flying of model aircraft powered by internal combustion engines, whether tethered or not, or the firing or operating of model rocket vehicles or other similar noise-producing devices, in a residential area between the hours of 10:00 p.m. and 7:00 a.m. the following day, or in such a manner as to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained.

(8) ***Refuse collection.*** The collection of garbage, waste or refuse between the hours of 11:00 p.m. and 7:00 a.m. the following day in any residential area or within 300 feet of a residential area, or in such a manner as to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained.

(9) ***Emergency signaling devices.*** The intentional sounding or permitting the sounding outdoors of any fire, burglar or civil defense alarm, siren, whistle or similar stationary emergency signaling device for more than five minutes during any consecutive 60-minute period or so as to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities, unless a permit of variance is first obtained and except for those exemptions outlined in this ordinance.

(10) ***Loading and unloading merchandise.*** The loading and unloading of merchandise or cargo between the hours of 10:00 p.m. and 7:00 a.m. of any motor vehicle where such loading or unloading area is within a distance of 200 feet from the property line of any residential dwelling so as to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities.

Section 4. Motor vehicle noise.

Notwithstanding the above, and cumulative to section 3, the following sounds involving motor vehicles are hereby determined to be specific noises which can constitute a noise disturbance and a violation of this ordinance:

(a) ***Exceeding noise limits.*** No person shall drive or move or permit to be driven or moved a motor vehicle or combination of motor vehicles at any time on a public right-of-way under any conditions of grade, load, acceleration or deceleration in such a manner as to exceed the sound

limits set forth in this section for the appropriate category of motor vehicle. Measurement shall be made at a distance of 25 feet, measured from the receiving side, monitored at a height of at least four feet above the immediate surface.

(b) ***Motor vehicle and motorcycle sound limits.***

(1) Any motor vehicle, motorcycle, or combination of vehicles towed by any motor vehicle with a GVWR or GCWR less than 10,000 pounds shall not exceed 96 dBA in speed limits of 40 miles per hour or less.

(2) Any motor carrier vehicle with a GVWR or GCWR of 10,000 pounds or more shall not exceed 96 dBA in speed limits of 40 miles per hour or less.

(c) ***Modifications to motor vehicles.*** No person shall operate or cause to be operated any motor vehicle, unless the vehicle is equipped with an exhaust system which includes a tailpipe and resonator where the original vehicle design included a tailpipe and resonator. Such exhaust system shall be:

(1) Equipped with a muffler which is in good working order (free of damage to the baffles contained in the muffler and is in constant operation).

(2) Not equipped with any cut out, bypass or similar device.

(d) ***Tire noise.*** It is unlawful for any person to operate a motor vehicle in such a manner as to cause or allow to be emitted squealing, screeching or other such sound from the tires in contact with the ground because of rapid acceleration or excessive speed around corners or other such reason; provided that sound resulting from emergency braking to avoid imminent danger shall be exempted from this section.

(e) ***Off-highway motor vehicles.*** No person shall operate or permit to be operated any motorized vehicle off a public right-of-way in such a manner as to unreasonably disturb or interfere with the peace, comfort and repose of neighboring persons of ordinary sensibilities.

Section 5. Exemptions, permits of variance and appeals.

(a) Exemptions.

The term loud noise does not include noise or sound generated by the following:

(1) Cries for emergency assistance and warning calls.

(2) Radios, sirens, horns and bells on police, fire and other emergency response vehicles.

(3) School athletic events in school facilities, provided that such activities have been authorized by the owner or agent of such facilities.

(4) Fire alarms and burglar alarms prior to the giving of notice and a reasonable opportunity for the owner or tenant in possession of the premises served by any such alarm to turn off the alarm.

(b) ***Permits of variance.***

(1) Applications for a permit for relief from the noise level designated in this ordinance on the basis of undue hardship may be made to the mayor or the duly authorized representative. Any permit granted by the city hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The mayor or the duly authorized representative may grant relief as applied for if it is found:

- a. That additional time is necessary for the applicant to alter or modify the activity or operation to comply with this ordinance; or
- b. That the activity, operation or noise source will be of temporary duration and cannot be done in a manner that would comply with other provisions of this article; and
- c. That no other reasonable alternative is available to the applicant; and
- d. That the city may prescribe any conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood.

(2) No permanent noise variance permit may be issued except by resolution of the city council. Before such action may be taken, notice of such consideration of a permanent noise variance permit shall be sent to all owners of real property lying within 300 feet of the property on which the noise will be generated. Such notice shall be given not less than ten days before the date set for hearing by depositing a notice, properly addressed and postage paid, in the United States Post Office to such property owners as the ownership appears on the last-approved city tax roll.

(3) The city may require a noise study to be performed in order to evaluate the impact of a proposed permit of variance. Such study must be performed by personnel trained and qualified to conduct noise evaluations and studies of the impact of noise. The city shall make the determination as to whether personnel are trained and qualified to conduct noise evaluations and studies of the impact of noise. In the event such a study is necessary, the requesting party shall be notified in writing of such requirement. The requesting party shall be responsible for the expense of any study.

(c) ***Appeals.*** Any individual who claims to be adversely affected by noise as a result of the issuance of a variance permit or any individual who is aggrieved by the disapproval of a variance permit may appeal in writing to the city stating any information to support his/her claim. All appeals shall be reviewed by the city council. The appeal shall be made in writing at the office of the city secretary ten working days before a regularly scheduled meeting of the city council. There shall be an appeal fee of \$25.00 payable when the appeal is filed.

Section 6. Disorderly conduct.

Nothing herein shall affect the ability of the city or any person to file a charge under V.T.C.A. Penal Code, § 42.01 (disorderly conduct), or other law.

Section 7. Penalty.

Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed Five Hundred Dollars (\$500). Each day of violation shall constitute a separate offense.

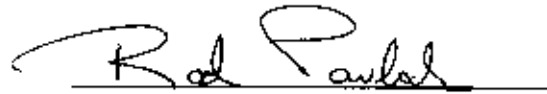
Section 8. Severability.

In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part of provision hereto other than the part declared invalid or unconstitutional; and the City Council of the City of Orchard, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 9. Repeal.

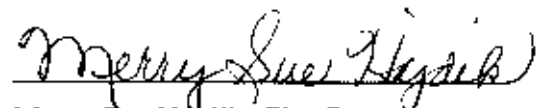
All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

PASSED, APPROVED, and ADOPTED this 2ND day of June 2014.



Rod Pavlock, Mayor

ATTEST:



Merry Sue Hajdik, City Secretary