

ORDINANCE NUMBER 2004-36

AN ORDINANCE SUPERCEDING ORDINANCE NUMBER 96-09, PROVIDING FOR THE CONTROL OF NOISE; PROVIDING A DECLARATION OF POLICY; PROVIDING FOR DEFINITIONS AND STANDARDS; PROVIDING FOR ADMINISTRATION; PROVIDING FOR ENVIRONMENTAL SOUND LEVELS; PROVIDING FOR EVENT OR PROJECT REVIEW; PROVIDING FOR THE PROHIBITION OF VARIOUS NOISES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR A PENALTY; AND PROVIDING SEVERABILITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHOREACRES, STATE OF TEXAS, THAT:

Section 1. Declaration of Policy.

It is hereby declared to be the policy of the City of Shoreacres to minimize the exposure of citizens to the harm of excessive noise and to protect, promote, and preserve the public health, comfort, convenience, safety, and welfare. It is the express intent of the City Council to control the level of noise in a manner which promotes the use, value, and enjoyment of property and preserve the quality of the environment.

Section 2. Definitions and Standards.

All technical language used in this ordinance, not defined in this chapter, shall be interpreted in conformance with applicable American National Standards Institute (ANSI) noise specifications, including, but not limited to, Section 1.1 - 1960 and Section 1.4 - 1971.

- A. A-weighted Sound Pressure Level- 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.
- B. Ambient Sound Level- 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 the ten (10) minutes or more than thirty (30) minutes.
- C. Decibel- logarithmic unit of measure used in describing the amplitude of sound; denoted as dB. A unit for measuring the volume of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).
- D. Device- any mechanism which is intended to produce, or which actually produces noise when operated of handled.
- E. Noise or Noise Disturbance- any sound which is unwanted or which causes, or tends to cause, an adverse psychological or physiological effect on human beings and/or (ii) harm to the public health, comfort, convenience, safety and/or welfare of the citizens of the City of Shoreacres, and/or (iii) sound levels which exceed the maximum sound levels established herein.
- F. Percentile Sound Pressure Level (Unit Percentile Level) - 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 10 percent of the

time in any measurement period (such as the level that is exceeded for 9 minutes in a 10 minute period). It is denoted L90.

- G. Person- Any individual, firm, association, partnership, corporation or any other entity, public or private.
- H. Property Boundary- 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. This boundary shall be located at the maximum extraterritorial jurisdiction of the city.
- I. Public right-of-way- any street, avenue, boulevard, highway, alley or similar place which is owned or controlled by a public governmental entity.
- J. Sound- 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. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.
- K. Sound Level- the weighted sound pressure level measured by the use of a metering characteristic and weighted as specified in American National Standards Institute Specifications, S. 1.4 - 1971. The sound pressure level of a sound expressed in decibels is 20 times the logarithm to the base 10 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.
- L. Sound Level Meter- an instrument, which includes a microphone, amplifier, RMS detector, 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 +/-two dBA and is of Type II so specified in ANSI Publication S1.4 - 1971.
- M. Stationary Sound Source- any device, fixed or moveable, which is located or used on property other than a public right-of-way.
- N. Residential Real Property- property zoned by the City of Shoreacres for a residential as opposed to a commercial use in the comprehensive zoning ordinance of the City. "Residential" shall include but not be limited to single family, multi-family, apartment and townhouse usage.

Section 3. Sound Levels by Receiving Land Use

- A. (1) No person shall operate or cause to be operated on public or private property any source of sound in such a manner as to create a sound level which raises the level by 5 dba or more above the ambient (baseline) sound levels, at any time when measured at or within the property boundary of the receiving use. Sound levels in excess of said limits shall constitute "noise disturbances."
- (2) No person who owns, operates, manages, leases, or who otherwise is in lawful control of residential or commercial premises shall authorize or permit any person to operate or cause to be operated any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category in Table 1 of this section when measured at or within the property boundary of the receiving use. Sound levels in excess of said limits shall constitute "noise disturbance."

(3) No person shall keep any animal or bird which, by causing frequent or long continued noise, shall disturb the comfort or repose of ordinary, reasonable persons or normal nervous sensibilities and ordinary tastes, habits and modes of living who reside in the vicinity thereof.

(4) No person shall use, operate, or permit to be operated any radio, receiving set, television set, musical instrument, phonograph, loud speakers, or other machine or device for the producing, reproducing, or transmitting of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device in such a manner as to be plainly audible at a distance of one hundred (100) feet from the building, structure or vehicle in which or on which it is located shall be prima facie evidence of a violation of this section.

(5) No person shall operate within the City of Shoreacres a motor vehicle, including boats, that are not equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke and no person shall use a muffler cutout, by-pass, or similar device upon a motor vehicle or boat. The engine and power mechanism of every motor vehicle or boat shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

B. Correction for character of sound- for any source of sound which emits a pure tone or impulsive sound, the maximum sound level limits shall be reduced by five dBA.

C. In addition to the above specified prohibitions – It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace, safety or welfare of others within the limits of the city, unless the making and continuing of the noise is necessary for the protection or preservation of property or of the health, safety, life or limb of some person.

D. Exceptions- The provisions of this article shall not apply to:

(1) holiday fireworks displays conducted, supervised or approved by the City;

(2) the unamplified human voice;

(3) church bells or similar calls to worship and outdoor religious services conducted on recognized religious holidays, including but not limited to Easter Sunrise services.

(4) fire alarms, burglar alarms, sirens, or warning devices of an emergency nature.

(5) lawn care equipment and residential construction equipment (when equipped with manufacturer's approved mufflers) and home power tool equipment when operated between the hours of 7:00 a.m. and 6:00 p.m.

Section 4. Administration: Noise Measurement

A. The Mayor shall administer and enforce this ordinance. In order to implement said enforcement said Mayor or any city police officer may:

(1) Make necessary inspections and tests to determine whether compliance is achieved or a noise disturbance is caused, created, or has been or is being authorized or permitted.

- (2) Cause the immediate abatement or lowering of said noise disturbance by the issuance of an appropriate order.
- (3) Warn the operators of said devices or the owners, managers, lessors, or any other persons lawfully in control of the use of residential or commercial property to abate a noise disturbance or be penalized hereunder as a violator of this ordinance.
- (4) File a complaint in the Municipal Court.

B. The City Council shall evaluate all applications for permits of variance from the requirements of this article and may grant said variances. The City Council shall consider the magnitude of nuisance caused by the offensive noise and the uses of property within the area of impingement by the noise.

Section 5. Penalty

Any person who shall violate any provision of this Ordinance shall be deemed guilty of Class C misdemeanor and, upon conviction shall be fined an amount not to exceed two thousand (\$2,000.00) or the maximum amount allowed by law. Each day of violation shall constitute a separate offense.

Section 6. Severability

The City Council of the City of Shoreacres hereby declares that if any section, paragraph, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid by final judgment of a court of competent jurisdiction, it will not affect the remaining portions of this Ordinance. The City Council declares it would have passed and ordained all the remaining portions of this Ordinance without the inclusion of those portions found to be unconstitutional or invalid.

Section 7. Effective date

This ordinance shall become effective upon adoption and publication as required by law.

State law reference (s) Authority of city as to abatement and removal of nuisances, V.T.C.A., Local Government Code 217.041 et seq.; abatement of public health nuisances, V.T.C.A., Health and Safety Code 341.011 et seq.

Section 8. Repeal of Previous Ordinance

Ordinance Number 96-09 is hereby superceded at the passing of this Ordinance.

PASSED AND APPROVED ON THIS 22 DAY OF NOVEMBER 1996.

CITY OF SHOREACRES, TEXAS

BY *Mary R. Elmore*
Mayor

ATTEST:

Robin Eldridge, acting
City Secretary