

CITY OF PECAN HILL

ORDINANCE NO. 09-05

AN ORDINANCE OF THE CITY OF PECAN HILL AMENDING CHAPTER 8 OF THE CODE OF ORDINANCES OF THE CITY OF PECAN HILL TO ESTABLISH A NEW ARTICLE 8.400, ENTITLED NOISE; PROVIDING A PURPOSE; PROVIDING DEFINITIONS; PROHIBITING SPECIFIC NOISE DISTURBANCES; PROVIDING EXEMPTIONS; REQUIRING PERMITS FOR VARIANCES; PROVIDING APPEALS; ESTABLISHING A PENALTY; ESTABLISHING INJUNCTIVE RELIEF; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR A PENALTY FOR THE VIOLATION HEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Pecan Hill, as a Type A, general law municipality, and

WHEREAS, the City of Pecan Hill possesses all the rights, powers, and authorities possessed by all Type A General Law municipalities, including the authority to define and require the abatement of nuisances, as recognized in section 217.002 of the Texas Local Government Code; and

WHEREAS, the City Council of the City of Pecan Hill has the authority under Section 217.003 of the Texas Local Government Code, to suppress or prevent any noise or disturbance in any private or public place in the City; and

WHEREAS, the City Council of the City of Pecan Hill may restrain or prohibit the ringing of bells, blowing of horns, hawking of goods, or any other noise, practice or performance directed towards persons on a street or sidewalk by an auctioneer or other person for the purpose of business, amusement, or otherwise pursuant to Section 217.003 of the Texas Local Government Code; and

WHEREAS, the City Council has determined that it is in the best interest of the health, safety and general welfare of the public to establish a noise ordinance to prevent noise disturbances as public nuisances within the corporate city limits that disturb the peace and enjoyment of the citizens of the City of Pecan Hill.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PECAN HILL, TEXAS, THAT:

Section 1. That the above recitals are hereby found to be true and correct legislative findings and are incorporated herein for all purposes.

Section 2. The Code of Ordinances of the City of Pecan Hill, Texas, Chapter 8 is hereby amended to establish a new Article 8.400, entitled "Noise" which shall hereinafter read as follows:

"ARTICLE 8.400. NOISE

Sec. 8.401 Purpose and Enforcement.

The purpose of this Ordinance is to make it unlawful for any person or entity to make, cause to be made or allow any loud or unreasonably loud and disturbing noise of such character, intensity and duration as to be detrimental or offensive to the ordinary sensibilities of the inhabitants of the city, and/or which renders the enjoyment of life, health or property uncomfortable or interferes with public peace and comfort.

The Police Department, Code Enforcement Officer, Code Compliance Officer, Public Works Director and/or their designee may enforce the provisions of this Article, including but not limited to the issuance of citations and/or notices of violation.

Sec. 8.402 Definitions

- (1) City - means the City of Pecan Hill, employees or any authorized representative of the City.
- (2) Construction - Any site preparation, assembly, erection, substantial repair, alteration, or similar action (excluding demolition) of public or private right-of-way surfaces, structures, utilities or similar property.
- (3) Demolition - Any dismantling, intentional destruction or removal of public or private right-of-way surfaces, structures, utilities or similar property.
- (4) Device - Any mechanism which is intended to produce, or which actually produces, noise when operated or handled.
- (5) Emergency Vehicle - A motor vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.
- (6) Motor Vehicle - Any vehicle propelled by mechanical power, such as, but not limited to, any passenger car, truck, truck-trailer, semi-trailer, camper, motorcycle, mini-bike, pocket bike, go-cart, dune buggy or racing vehicle.

- (7) Noise Disturbance - Any sound which annoys or disturbs, or which causes or tends to cause an adverse psychological or physiological effect upon, the sensibilities of a reasonable, prudent, adult person; and unreasonably loud or disturbing noise which renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort.
- Noise disturbance Per Se - Not requiring extraneous evidence or support to establish the existence of a noise disturbance.
- (8) Owner - means any person having supervision or control of any property.
- (9) Non-Residential District - Any district not classified by the zoning ordinance as containing residential homes, apartments or condominiums.
- (10) Power Equipment - Any motorized electric or fuel powered equipment, including but not limited to tractors, lawnmowers, and other similar device or equipment.
- (11) Power Model Vehicle - Any self-propelled airborne, waterborne, or land borne plane, vessel, or vehicle, which is not designed to carry persons, including but not limited to, any model airplane, boat, car or rocket.
- (12) Property - means any lot, tract, parcel of land or a portion thereof, occupied or unoccupied, improved or unimproved, public or private within the territorial limits of the City.
- (13) Property Boundary - An imaginary line exterior to any enclosed structure, at the ground surface and its vertical extension, which separates the real property owned by one person from that owned by another person.
- (14) Quiet Zone - Property on which a school, hospital, clinic, library or other noise disturbance sensitive facility is operated.
- (15) Residential District - Any district classified by the zoning ordinance as containing residential homes, apartments, condominiums or dwelling units.
- (16) Roadway - means any street, alley, parkway, sidewalk or gutter.

All terminology used in this Ordinance and not specifically defined above, shall retain its meaning in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body and/or the latest volume of Webster's Collegiate Dictionary.

Sec. 8.403 Specific Noise Disturbance Prohibited

- (1) No person shall allow, make or cause to be made any unreasonably loud or disturbing noise which is offensive to the sensibilities of a reasonable, prudent adult person, renders the

enjoyment of life or property uncomfortable, interferes with public peace and comfort, or causes a noise disturbance as defined.

(2) The following includes, but is not limited to, activities which can create unreasonably loud or disturbing noises in violation of this ordinance, including activities which are noise disturbances per se, unless an exemption exists or a permit of variance was first obtained as provided in Sec. 8.404 or 8.405.

(A) Animals - Owning, keeping, possessing, or harboring any animal or fowl which by frequent or habitual noise making, unreasonably disturbs or interferes with the peace, comfort or repose of citizens, or causes a noise disturbance as defined herein. The provision of this ordinance shall apply to all private or public facilities including any animal shelter or commercial kennel, which holds or treats animals.

(B) Radios, television sets, musical instruments, loud speaking amplifiers and similar devices.

1) The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device for the producing or reproducing of sound within a residential district, or quiet zone, or within five hundred feet (500) of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 9:00 p.m. and 6:00 a.m.

2) The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeaker and sound amplifiers or other machine or device for the producing or reproducing of sound within a non-residential area in such a manner as to cause a noise disturbance.

3) The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device that produces or reproduces sound for the purpose of attracting attention to any cause or demonstration, or to any performance, show, sale or display of merchandise so as to attract attention to such cause, demonstration or premises when such use is done in a manner which causes a noise disturbance.

4) The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device on trucks or other moving vehicles for the purpose of

attracting attention to any cause or demonstration, or for advertising any show, sale or display of merchandise when such use is done in a manner which causes a noise disturbance.

- (C) Vehicular Sound Amplification Systems - Operating or controlling a motor vehicle in either a public or private place within the city and operating any sound device which is part of, or connected to, any radio, stereo receiver, compact disc player, cassette tape player, or other similar device in the motor vehicle in such a manner that, when operated, it is audible at a distance of thirty feet (30), or when operated, causes a person to be aware of the vibration accompanying the sound at a distance of thirty feet (30) from the source when such operation is done in a manner which causes a noise disturbance.
- (D) Yelling, shouting, Etc. - The yelling shouting, crying, hooting, whistling or singing of peddlers, hawkers or any other person in such a manner to cause a noise disturbance
- (E) Loading Operations - The loading or unloading of any vehicle in such a manner as to cause a noise disturbance.
- (F) Construction/Maintenance Work - (Work on Saturday is restricted to 8 AM to 7 P.M. and none of the activities listed in this subsection (F) may be conducted on Sunday or nationally observed Holidays.
 - 1) Operating or permitting to be operated any equipment used in construction, maintenance, repair, alteration or demolition work on buildings, structures, streets, alleys, lawns, golf courses or appurtenances thereto and/or the erection, including excavation, demolition, alteration or repair of any building within a residential district or quiet zone, or within five hundred feet (500) of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 9:00 p.m. and 6:00 a.m.
 - 2) Operating or permitting to be operated any gravel pit, rock crusher, or other machinery for the separation, gathering, grading, loading or unloading of sand, rock or gravel within a residential district or quiet zone, or within five hundred feet (500) of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 9:00 p.m. and 6:00 a.m.
 - 3) Operating or permitting to be operated any equipment used in construction, maintenance, repair, alteration or demolition work on buildings, structures, streets, alleys, lawns, golf course or appurtenances thereto within a non-residential district in such a manner as to cause a noise disturbance.
 - 4) Operating or permitting to be operated any gravel pit, rock crusher or other machinery for the separation, gathering, grading, loading or unloading of sand, rock

or gravel within a non-residential district in such a manner as to cause a noise disturbance.

(G) Power Equipment

- 1) Operating or permitting to be operated any power equipment (as defined herein and excluding construction equipment which is specifically regulated above) within a residential district or quiet zone, or within five hundred feet (500) of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 9:00 p.m. and 6:00 a.m.
- 2) Operating or permitting to be operated any power equipment (as defined herein and excluding construction equipment which is specifically regulated above) within a non-residential district in such a manner as to cause a noise disturbance.

(H) Motor Vehicle-Repairs or Testing

- 1) The repairing, rebuilding, modifying or testing of any motor vehicle (including off-road vehicles) or watercraft within a residential district or quiet zone, or within five hundred feet (500) of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 9:00 p.m. and 6:00 a.m.
- 2) The repairing, rebuilding, modifying or testing any motor vehicle (including off-road vehicles) or watercraft within a non-residential district in such a manner as to cause a noise disturbance.

(I) Motor Vehicles-Running Loud or Out of Repair

- 1) The use of any automobile, motorcycle, or other vehicle so out of repair, so modified, or so loaded, which emits or creates loud or unnecessary grating, grinding or rasping noise, the excessive spinning of the tires, or the racing of a motor vehicle engine unnecessarily within a residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, such activity shall create a noise disturbance per se if conducted between the hours of 9:00 p.m. and 6:00 a.m.
- 2) The use of any automobile, motorcycle or other vehicle so out of repair, so modified, or so loaded, which emits or creates loud or unnecessary grating, grinding or rasping noise, the excessive spinning of the tires, or the racing of a motor vehicle engine unnecessarily within a non-residential district in such a manner as to cause a noise disturbance.

- (J) Motor Vehicle - Exhaust - The discharge into the open air of the exhaust of any motor vehicle in such a manner as to cause a noise disturbance, except as discharged through a

muffler or other device which effectively and efficiently prevents loud and unusual noises and annoying smoke.

- (K) Explosive Devices - Explosive sound sources including, but not limited to, the use of fireworks, explosives, the firing of guns or other explosive devices in such a manner as to cause a noise disturbance. Provided however, no such noise disturbance shall be deemed to exist when the activity is allowed or sanctioned by ordinance or other authority and the activity is conducted in strict accordance with said ordinance or authority.
- (L) Powered Model Mechanical Devices -
- 1) 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, within a residential district or quiet zone, or within five hundred feet (500) of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 9:00 p.m. and 6:00 a.m.
 - 2) 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 within a non-residential district in such a manner as to cause a noise disturbance.
- (M) Refuse Compacting Vehicles - Operating or permitting to be operated any refuse compacting, processing or collection vehicles in any residential district or quiet zone, or within five hundred feet (500) of any residence or quiet zone in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance per se if conducted between the hours of 9:00 p.m. and 6:00 a.m. No noise disturbance shall be deemed to occur when the noise is created in the regular course of the activity for which the equipment is designed and the noise occurs for no longer than reasonably necessary to conduct the activity and the hours of operation occur between 6:01 a.m. and 8:59 p.m.
- (N) Quiet Zone - Creating a noise disturbance on any street adjacent to any school, hospital, clinic, library or other noise sensitive facility.
- (O) Stationary Non-Emergency Signaling Devices - Sounding or permitting the sounding of any electronically activated or amplified signal from any stationary bell, chime, siren, whistle, or similar device, intended primarily for non-emergency purposes, from any place for more than five (5) minutes during any consecutive sixty (60) minute period which causes a noise disturbance. Such signaling device is allowed if used as a danger signal, residential alarm, and/or as required by law if vehicle is backing, starting or turning in such a way as to likely cause a collision.

- (P) Vibration. Using or causing to use any device that creates any ground vibration which is perceptible without instruments at any point on or beyond the property boundary of the source.

Sec. 8.404. Exemptions

The following sources of potential noise disturbance shall be exempt from the regulations of this Ordinance.

- (A) Safety signals, storm warning sirens or horns and the testing of such equipment, emergency vehicle sirens or horns used when responding to an emergency, and emergency pressure relief valves.
- (B) Sound caused in the performance of emergency or public service work, including police, fire and public utility operations, acting in the performance of lawful duties to protect the health, safety or welfare of the community.
- (C) Sounds caused by natural phenomena.
- (D) Activities conducted on public parks and playgrounds which are approved, sponsored or sanctioned by the City. Activities conducted on public or private school grounds including, but not limited to, school athletic and school entertainment events which are approved, sponsored or sanctioned by the school.
- (E) Agricultural activities e.g., planting, haying, plowing, spraying, harvesting, maintenance of crop fields, loading and un-loading of farm animals including horses, building or repairing crop or animal fencing or corrals or any other activity directly related to an obvious agricultural use. This does not include the maintenance and repair of agricultural machinery.

Sec. 8.405 Permits of Variance

- (A) The City Council of the City of Pecan Hill is authorized to grant permits for relief of any provision in this Ordinance on the basis of undue hardship in cases where:
- 1) The sound source will be of short duration and the activity cannot be conducted in a manner as to comply with this Ordinance;
 - 2) Additional time is necessary for the applicant to alter or modify their activity or operation to comply with this Ordinance; or
 - 3) No reasonable alternative is available to the applicant.
- (B) A fee of \$50.00 shall be charged to each applicant for processing permit applications.

Sec. 8.406. Penalty

Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00). A separate offense shall be deemed committed upon each day during or on which a violation or failure to comply occurs. Notwithstanding the foregoing, in the event a citation is issued for a violation hereof and the violator commits another act on the same day in the same manner, a separate violation shall be deemed to exist for which a separate citation may issue and an enhanced penalty may be assessed not to exceed the maximum penalty ascribed herein.. Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this Ordinance.

Sec. 8.407. Injunctive Relief and Abatement Authority

- (A) In addition to and accumulative of all other penalties, the City shall have the right to seek injunctive relief for any and all violations of this Ordinance.
- (B) In the case of noise disturbances created by construction activity, the City shall have the authority to issue stop work orders, or invalidate any permit issued for the activity until compliance with the noise ordinance is assured.

Section 3. Should any word, sentence, paragraph, subdivision, clause, phrase, or section of this ordinance, or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

Section 4. All provisions of the Code of Ordinances of the City of Pecan Hill, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effort.

Section 5. Any person, firm, or corporation violating any of the provisions of this ordinance or of the Code of Ordinances, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of Pecan Hill, Texas, shall be subject to a fine not to exceed the sum of five hundred dollars (\$500.00) for each offense; and each and every day said violation is continued shall constitute a separate offense. Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this Ordinance.

Section 6. This ordinance shall take effect immediately from and after its passage and the publication of the caption as the law in such cases provide.

DULY PASSED AND APPROVED by the City Council of the City of Pecan Hill, Texas, the 19th
day of May, 2009.

APPROVED:

Howard Haber
MAYOR

ATTEST:

Kathy J. [Signature]
CITY SECRETARY

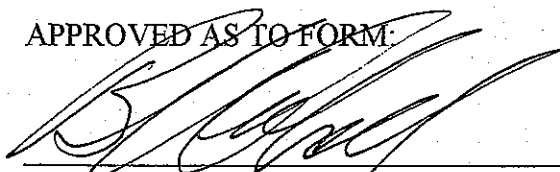
APPROVED AS TO FORM:

BONNIE LEE GOLDSTEIN, CITY ATTORNEY

May 19th
2009

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APPROVED AS TO FORM:



BONNIE LEE GOLDSTEIN, City Attorney
City of Pecan Hill