

ORDINANCE NO. 775

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING CHAPTER 23-MISCELLANEOUS OFFENSES, ARTICLE IV. NOISE, SEC. 23-60. EXCESSIVE NOISE RESTRICTIONS AND PROHIBITIONS TO INCLUDE NOISE RESTRICTIONS FOR MOTOR VEHICLES WITHIN THIRTY (30) FEET OF SUCH VEHICLE; PROVIDING FOR THE ABATEMENT OF NOISE NUISANCES; PROVIDING PENALTIES FOR VIOLATIONS; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

WHEREAS, the City of Kyle, Texas (the "City") is by State law to establish ordinances to protect the health, safety and general welfare of its residents; and

WHEREAS, by this the City seeks to abate and otherwise control noise nuisances within the City;

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

Section 1. Findings. That the above premises and findings of fact are found to be true and correct and are incorporated into the body of this ordinance as if copied in their entirety.

Section 2. Noises Prohibited. Any unreasonably loud, disturbing or unnecessary noise which causes material distress, discomfort or injury to persons of ordinary sensibilities in the immediate vicinity thereof, or any noise of such character, intensity and continued duration which substantially interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities, is prohibited after the effective date hereof, and is hereby declared to be a nuisance. The following acts, among others, are declared to come within the purview of this Ordinance and to be nuisances within the meaning hereof, but said enumerations shall not be deemed to be exclusive, such acts being as follows:

(a) The playing of any radio, phonograph or other musical instrument, or any musical reproduction or amplification device, in such manner or with such volume, particularly during the hours from 10:00 p.m. until 7:00 a.m., as to annoy or disturb the quiet, comfort or repose of persons of ordinary sensibilities in any dwelling, hotel or other type residence;

(b) Any loud or vociferous language or any soliciting for, or description of any amusement house, moving picture theater, or other like place of amusement, or for the performance therein, in the entrance thereto, the foyer or lobby thereof, or on the sidewalks adjoining the same;

(c) Any loud or vociferous language which annoys or disturbs the quiet, comfort or repose of persons of ordinary sensibilities in any dwelling, hotel or other type residence;

(d) The use of any stationary loudspeaker or amplifier, particularly during the hours from 10:00 p.m. until 7:00 a.m., to produce a noise or sound of such pitch, intensity that annoys or disturbs persons in the immediate vicinity thereof;

(e) The keeping of any animal or fowl which, by causing frequent or long continued noise, disturbs the comfort or repose of persons of ordinary sensibilities in the immediate vicinity thereof;

(f) The continued or frequent sounding of any horn or other signal device on any automobile or other vehicle except as a danger or warning signal, or the creation by means of any such signal device of any unreasonably loud or harsh noise for any unnecessary purpose or unreasonable period of time;

(g) The blowing of any steam whistle attached to any stationary boiler, except when giving notice of the time to commence or stop work, or as a warning of danger;

(h) The discharge into the open air of the exhaust of any fixed and stationary steam engine, stationary internal combustion engine, or motor vehicle or boat engine, except through an exhaust system in good working order and in constant operation to prevent excessive or unusual noise; provided that this paragraph shall not apply to trains and locomotives;

(i) The use of any mechanical device operated by compressed air, unless the noise to be created thereby has been effectively muffled and reduced;

(j) The creation of any excessive or unreasonable noise on any street or premises adjacent to any school, place of religious worship, or other institution of learning while the same is in session, or any hospital, which unreasonably interferes with the operation or use of any such institution;

(k) The raucous shouting or crying of peddlers, hawkers or vendors which unreasonably disturbs the peace and quiet of any neighborhood; and

(l) The excavation or grading of land, or the erection, construction, demolition or alteration of any building or structure, between the hours of 9:00 p.m. and 7:00 a.m., within six hundred feet (600') of any occupied residential structure, or that generates, produces or results in any noise or sound that may be heard at the property line of any occupied residential structure; provided that this paragraph shall not apply to any such work, construction, repairs or alterations that constitute an urgent necessity for the benefit and interest of the public safety, health or general welfare, e.g. repairs and emergency installations by any public utility, or to any excavation, erection, construction, demolition or alteration authorized by the city council to be undertaken between the hours of 9:00 p.m. and 7:00 a.m.

(m) Motor vehicle stereos. Any person operating or controlling a motor vehicle to operate any radio, stereo receiver, compact disc player, cassette player or other similar device in the motor vehicle in such a manner that, when operating, it is:

1. Audible in a public place or on private property other than that owned or occupied by the person at a distance of 30 feet or more from the vehicle; or
2. Cause vibration that can be felt at a distance of 30 feet or more from the

vehicle.

Section 3. Person in Control of Property. It shall be unlawful for any person to permit or fail to control the nuisances described in Section 2 of this ordinance that occur upon property which is under said person's control at the time the nuisance occurs.

Section 4. Exceptions. The prohibitions in this ordinance shall not apply to the reasonable playing of musical instruments, the use of an amplifier, or crowd noise during an event that is sponsored by a religious, school, civic, or community association or organization, or a trade or political group, provided that such noise occurs before 10:00 p.m. on a Sunday, Monday, Tuesday, Wednesday, or Thursday, or before 11:59 p.m. a Friday or a Saturday, and provided that such noise occurs during the event and as part of the event. The noise addressed by this section is presumed to be unreasonable if the noise exceeds a decibel level of 85 after the notice and failure to reduce the sound volume to within 85 decibels or less, measured at the property line of the property at which the event is held.

Section 5. Conduct Consisting of Speech or Communication. If conduct that would otherwise violate this Ordinance consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a non-violent manner a position on social, economic, political or religious questions the person or persons shall be ordered to reduce the sound or otherwise remedy the violation prior to being issued citations.

Section 6. Penalty. Any person, firm or corporation violating any provision of this ordinance shall be fined not less than One Dollar (\$1.00) nor more than Five Hundred Dollars (\$500.00) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Section 7. Severability. Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

Section 8. Repeal of Conflicting Ordinances. Ordinance No. 424-1 is hereby repealed. All ordinances or parts of ordinances inconsistent with or in conflict with this ordinance are hereby repealed to the extent of such inconsistency or conflict.

Section 9. Savings Clause. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any ordinances affecting noise or the regulation of noise as a nuisance within the City which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

Section 10. Effective Date. That this ordinance shall take effect immediately from and after its passage and publication in the manner required by the Tex. Loc. Gov't. Code.

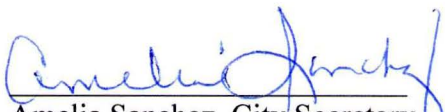
Section 11. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapter 551, Tex. Gov't. Code.*

PASSED AND APPROVED on first reading this 21st day of January, 2014.

PASSED AND APPROVED on second reading this 4th day of February, 2014.

ATTEST:

CITY OF KYLE, TEXAS


Amelia Sanchez, City Secretary


Lucy Johnson, Mayor