

ORDINANCE NO. 2005-378

AN ORDINANCE AMENDING ORDINANCE NUMBER 2005-377 OF THE CITY OF MAGNOLIA, TEXAS HERETOFORE INITIALLY PASSED AND APPROVED ON THE 11th DAY OF OCTOBER, 2005, BY DELETING SECTION 9, ENTITLED "OUTDOOR SOUND AMPLIFICATION PERMIT".

WHEREAS, the City Council of the City of Magnolia has heretofore adopted AN ORDINANCE ADOPTING PROVISIONS RELATING TO NOISE AND SOUND LEVEL REGULATION CONTROL IN THE CITY LIMITS OF THE CITY OF MAGNOLIA, MONTGOMERY COUNTY, TEXAS being Ordinance Number 377 approved on the 11th day of October, 2005, and

WHEREAS, said Ordinance Number 2005-377 provides regulations of noise and sound within the City limits, and

WHEREAS, after study and review the City Council of the City of Magnolia has determined that said ordinance should be amended to delete the requirements for permits for outdoor sound amplification permits, and

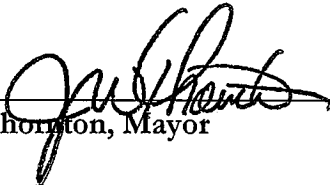
WHEREAS, notice of the agenda for this meeting, was given in accordance with law by posting the same at the place reserved and designated for notices of public meetings and public activities and prior to the adoption of this ordinance; and

NOW THEREFORE,

BE IT ADOPTED BY THE CITY COUNCIL OF THE CITY OF MAGNOLIA, TEXAS:

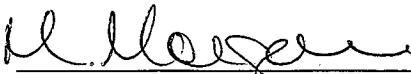
1. The City Council of the City of Magnolia having reviewed the findings of fact and conclusions as herein set out and adopts the same for inclusion in this ordinance if the same had been repeated verbatim herein.
2. Ordinance Number 2005-377 of the City of Magnolia, Texas is hereby amended by deleting SECTION 9, ENTITLED "OUTDOOR SOUND AMPLIFICATION PERMIT".

PASSED AND APPROVED THIS THE 8th DAY OF November, 2005.



Jimmy Thornton, Mayor

Attest:



Melonie Hopkins, Acting City Secretary

ORDINANCE NO. 2005-377

AN ORDINANCE ADOPTING PROVISIONS RELATING TO NOISE AND SOUND LEVEL REGULATION CONTROL IN THE CITY LIMITS OF THE CITY OF MAGNOLIA, MONTGOMERY COUNTY, TEXAS; BEING DEFINITIONS, GENERAL PROHIBITIONS, PRIMA FACIE EVIDENCE OF SOUND NUISANCE, NOISY VEHICLES, TRAFFIC AND VEHICLES, NOISY ANIMALS AND BIRDS, DEFENSES, OUTDOOR SOUND AMPLIFICATION PERMIT, CONDITIONS OF A SOUND AMPLIFICATION PERMIT AND PENALTY; ESTABLISHING AN EFFECTIVE DATE; REPEALING ALL INCONSISTENT PROVISIONS AND PROVIDING FOR PARTIAL INVALIDITY.

WHEREAS, the Planning Commission of the City of Magnolia has determined that there is a need for establishing a basic level of regulations for the emission of noise and sound levels, to help in protecting the users of property who are in close proximity to others who are creating noise or an excessive level of sound from the harmful effects and inconvenience of such sounds and to help promote peacefulness within the City; and

WHEREAS, the Planning Commission has reviewed similar ordinances of other Cities, and has through research and interactions with the Citizens determined that a noise ordinance is proper and necessary;

WHEREAS the City Council, upon full consideration of the matter, is of the opinion that this noise ordinance hereinafter set forth is proper and should be approved and adopted.

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

Section 1. The facts and matters set forth in the preamble of this Ordinance are found to be true and correct and are hereby adopted, ratified, and confirmed.

Section 2. Definitions.

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

Commercial property means real property which is not within the definition of residential property as defined by this section.

dB(A) means the intensity of a sound expressed in decibels read from a calibrated sound level meter utilizing the A-level weighting scale and the slow meter response, as specified by the American National Standards Institute.

Residential property means real property which is dedicated or restricted to use for single-family or multifamily residential purposes and which is not actually used for another purpose, or real property upon which there exists a single-family residence or multifamily residential purposes and which is not actually used for another purpose, or real property upon which there exists a single-family residence or multifamily residence. In the case of an apartment building or other multifamily residential structure, each unit of occupancy may be considered a separate residential property. The term residential property does not include a hotel, motel or other similar accommodations not intended or generally utilized for long-term occupancy.

Sound amplification device means the speaker or mechanism from which amplified sound emanates.

Sound nuisance means any sound which unreasonably annoys, disturbs, injures or endangers the peace, comfort, repose, health or safety of a reasonable person of ordinary tastes and sensitivities.

Section 3. General prohibition.

- (a) It shall be unlawful for any person to make, cause, allow, or permit a sound nuisance.
- (b) The acts enumerated in the following sections of this article, among others, are declared to be sound nuisances in violation of this article, but such enumeration shall not be deemed to be exclusive.

Section 4. Prima facie evidence of sound nuisance.

(a) Nothing in this article shall be deemed to require the use of noise decibel (dB(A)) evidence in any prosecution instituted under this article, provided, however, evidence that an activity or sound source produces a sound that exceeds the following dB(A) levels when measured upon a receiving property shall be prima facie evidence of a sound nuisance:

- (1) Upon a receiving residential property:
 - a. 65 dB(A) between 7:00 a.m. and 10:00 p.m. of the same day; and
 - b. 58 dB(A) between 10:00 p.m. of one day and 7:00 a.m. of the next.

(2) 68 dB(A) upon a receiving commercial property.

(b) Unless a differing point of reception is specified, all measurements shall be taken at or near the nearest property line of the property where the sound is being received.

Section 5. Noisy vehicles.

The use of any automobile, motorcycle, or other vehicle so out of repair or loaded in such a manner so as to create loud and unreasonable grating, grinding, rattling noise, or any other loud and unreasonable sound is hereby prohibited and declared to be unlawful.

Section 6. Noise from motor vehicle radio, tape player or other devices.

- (a) It shall be unlawful for any person to make, cause, allow or permit a sound nuisance through operation of any radio, tape player or other device for producing, reproducing, amplifying or broadcasting sound, which is mounted or contained in or on a motor vehicle.
- (b) Evidence that a motor vehicle sound source produces a sound that exceeds the dB(A) levels established by section 4 when measured at or near 15 feet from the nearest external point on the vehicle shall be prima facie evidence of a sound nuisance.

Section 7. Noisy animals and birds.

The keeping of any animal or bird which causes or makes frequent or long and continued sound which unreasonably annoys, disturbs, injures or endangers the peace, comfort, repose, health or safety of a reasonable person of ordinary tests and sensitivities is hereby prohibited and declared to be unlawful.

Section 8. Defenses.

The following defenses shall apply to any offense established in this article:

- (1) The emission of any sound was for the purpose of alerting persons to the existence of an emergency, danger or attempted crime.
- (2) The sound was produced by an authorized emergency vehicle.
- (3) The sound was produced by emergency work necessary to restore public utilities, or to restore property to a safe condition, or to protect persons or property from imminent danger, arising out of fire, accident or natural disaster.
- (4) The sound was produced by a street sweeper or other equipment used for public street maintenance.
- (5) The sound was generated:
 - a. At a lawfully scheduled stadium event;
 - b. By a parade and spectators and participants on the parade route during a permitted parade;
 - c. By spectators and participants of any outdoor event, fun run, race, festival, fiesta, or concert permitted by the city; or
 - d. Any other lawful activity which constitutes protected expression pursuant to the First Amendment of the United States Constitution.
- (6) The sound was produced between 7:00 a.m. and 9:00 p.m. of the same day by the erection, excavation, construction, demolition, alteration or repair of a building or other structure, or the operation of tools and equipment used in any such activity.
- (7) The sound was produced between 7:00 a.m. and 9:00 p.m. of the same day by the operation of any mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, lawnmower, or any other similar device used for the maintenance or upkeep of the property on which it was used.

- (8) The sound was produced by aircraft in flight or in operation at an airport, or railroad equipment in operation on railroad rights-of-way.
- (9) The sound was generated as authorized under the terms of a permit issued under this article for operation of an outdoor sound amplification system.
- (10) The sound was produced by operation of an air conditioning unit.
- (11) The sound was produced by church bells or church chimes when used as part of a religious observance or service.

Section 9. Outdoor sound amplification permit.

- (a) No person shall use or operate a sound amplification device that emits sounds audible within a public street or other outdoor place without a valid sound amplification permit.
- (b) A person desiring to obtain a sound amplification permit shall make application to the director of community development on a form prescribed by the director. The application must include the name, address and telephone number of the applicant; the address or location upon which the applicant proposes to use or operate a sound amplification device; and the hours during which the applicant proposes to use or operate such device. A nonrefundable fee as set forth in appendix A must accompany the application.
- (c) It is an exception to the requirements of this section that the sound amplification system does not produce a sound that exceed the dB(A) levels established by this article as prima facie evidence of a sound nuisance.

Section 10. Conditions of a sound amplification permit.

- (a) Outside the designated large event venues a sound amplification permit may not be issued to permit operation of a sound amplification device at a location closer than 300 feet from any church, school, hospital or residential property, provided however that this requirement can be waived with the consent of the affected resident, church, school or hospital.
- (b) Outside the designated large event venues a sound amplification permit may not be issued for the same location more frequently than once every 30 days.
- (c) Outside the designated large event venues a sound amplification permit shall restrict operation of the sound amplification device to the periods between 10:00 a.m. and 10:00 p.m. Monday through Saturday and between 12:00 p.m. and 6:00 p.m. on Sunday. During such permitted hours no sound amplification device may be used or operated in such a manner as to produce a sound in excess of 85 dB(A) as measured 100 feet in front of the device, or at any boundary of the property on which the device is operated, whichever distance is less.
- (d) Within the designated large event venues a sound amplification permit shall restrict operation of the sound amplification device to the periods between 10:00 a.m. and 10:00 p.m. Monday through Thursday, between 10:00 a.m. and midnight for events commencing on Friday and Saturday, and between 12:00 p.m. and 6:00 p.m. on Sunday. Between the hours of 10:00 a.m. and 10:00 p.m. no sound amplification device may be used or operated in such a manner as to produce a sound in excess of 85 dB(A) as

measured 200 feet in front of the device, or at any boundary large event venue in which the device is operated, whichever is lesser. Between the hours of 10:00 p.m. and midnight the maximum sound limit shall be reduced to 80 dB(A).

(e) Without the consent of the city council no sound amplification permit shall be issued permitting operations in any municipal park. No sound amplification permit shall be issued permitting operations in any city park without the consent of the director of parks who may impose such other additional conditions as he shall deem appropriate.

(f) Operation of a sound amplification device in violation of the conditions of a permit shall be considered a sound nuisance.

Section 11. Penalty.

Any person who violates any provision of this article shall, upon conviction, be subject to a fine of not more than \$500.00. Each day that a violation of this article continues shall constitute a separate offense.

Section 12. Severability.

It is the intention of the City Council of the City of Magnolia that if any phrase, sentence, section, or paragraph of this Ordinance shall be declared unconstitutional or otherwise invalid by final judgment or a court of competent jurisdiction such unconstitutionality or invalidity shall not affect any of the remainder of this Ordinance since the same would have been enacted by the City Council without the incorporation of the unconstitutional or invalid phrase, sentence, section or paragraph.

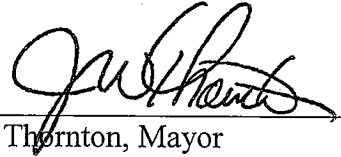
Section 13. Conflict.

All other ordinances or parts of ordinances in conflict herewith repealed to the extent that they are in conflict.

Section 14. Compliance Clause and Effective Date.

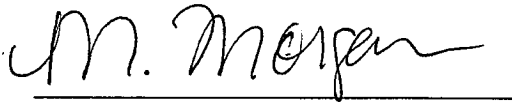
The City Council finds, determines and declares that a sufficient written notice was posted and this Ordinance was passed in accordance with the Open Meetings Act. The Acting City Secretary is instructed to publish this Ordinance in the Official Newspaper of the City of Magnolia in the manner provided and for the time required by Section 52.011(a) of the Local Government Code at which time this Ordinance takes effect.

PASSED, APPROVED, AND ADOPTED this 11th day of October, 2005.

A handwritten signature in black ink, appearing to read "Jimmy Thornton", written over a horizontal line.

Jimmy Thornton, Mayor

ATTEST:

A handwritten signature in black ink, appearing to read "M. Morgan", written over a horizontal line.

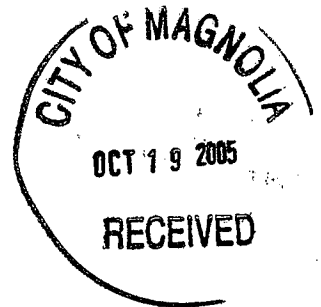
Melonie M. Morgan
Acting City Secretary

AFFIDAVIT OF PUBLICATION

Before me, the undersigned authority, on this day personally appeared Denny O'Brien who on his oath stated:

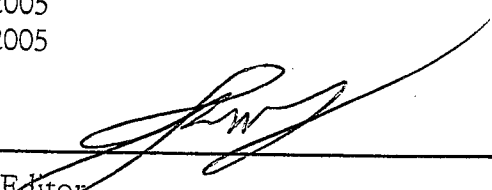
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I am the Editor of the Tomball Magnolia Tribune, a newspaper published in Montgomery County, Texas and now the facts stated in this affidavit. The attached matter is a true and correct copy of the publication of the citation of which it purports to be a copy, as the same appeared in such newspaper in the respective issues of:

10/17, 2005
 , 2005


Denny O'Brien, Editor

Subscribed and sworn to this 17th day of October, 2005

