

Motion was made by Charles Minton seconded by Sherry Roberts and passed with a unanimous vote that the following Ordinance be passed:

ORDINANCE NO. 303-2016

AN ORDINANCE REPEALING CITY OF SHEPHERD ORDINANCE NO. 186, DATED OCTOBER 11, 1999, AND AMENDING THE SHEPHERD CITY CODE OF ORDINANCES AT CHAPTER 8, ARTICLE III, SECTIONS 8-51 THROUGH 8-54; PROHIBITING THE CREATION OF ANY UNREASONABLY LOUD, DISTURBING AND UNNECESSARY SOUND WHICH UNREASONABLY ANNOYS, DISTURBS, INJURES OR ENDANGERS THE PEACE, COMFORT, REPOSE, HEALTH, OR SAFETY OF A REASONABLE PERSON OF ORDINARY TASTE AND SENSITIVITIES; DECLARING SAME TO BE A SOUND NUISANCE WHICH IS PROHIBITED; LISTING CERTAIN ACTS AS SOUND NUISANCES; PROVIDING A PROCEDURE FOR PERMITS AND VARIANCES; REGULATING OUTDOOR AMPLIFICATION EQUIPMENT ON MOTOR VEHICLES; PROVIDING A PROCEDURE FOR APPEAL TO THE CITY COUNCIL; PROVIDING A PENALTY OF UP TO \$500.00 FOR VIOLATION OF THE NOISE ORDINANCE; PROVIDING A SEVERANCE CLAUSE AND A REPEALING CLAUSE; PROVIDING A TEXAS OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION.

WHEREAS, the City Council of the City of Shepherd has passed Ordinance No. 186, dated October 11, 1999, prohibiting sound nuisances in the City of Shepherd; and

WHEREAS, the Ordinance has been codified in the City Code of Ordinances at Chapter 8, Article III, Sections 8-51 through 8-54; and

WHEREAS, the City Council wishes to delegate the review and approval of noise permits and variances to the City Mayor with the assistance of the City Secretary and City's law enforcement agency, with a right of appeal to the City Council;

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

SECTION ONE: AMENDMENT TO CODE OF ORDINANCES

Chapter 8, Article III of the City of Shepherd, Texas Code of Ordinances is hereby amended to read as follows:

ARTICLE III

Section 8-51 Sound Nuisance Defined.

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 8-52 Sound Nuisance Prohibited.

The following acts, among others, are declared to be loud, disturbing, and unnecessary noises and constitute sound nuisances in violation of this Ordinance.

- (1) The keeping of any animal or bird which causes or makes frequent or long and continued sounds which unreasonably annoys, disturbs, injures or endangers the peace, comfort, repose, health or safety of a reasonable person of ordinary taste and sensitivities is hereby prohibited and declared to be unlawful.
- (2) The sounding of any horn, signal device or any automobile, motorcycle, bus, streetcar or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control, or if in motion only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound and the sounding of such device for any unnecessary and unreasonable period of time.
- (3) Except where a specific permit is issued by the City Secretary, the using, operating, or permitting to be played, used or operated any radio receiving set, television set, musical instrument, phonograph, or other machine or device for the producing or reproducing 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 convenient hearing for persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto, is hereby prohibited. The operation of any such set, instrument, phonograph, machine or device in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be *prima facie* evidence of a violation of this section.

- (4) The use of any automobile, motorcycle, or vehicle out of repair, so loaded or in such manner as to create loud or unnecessary, grating, grinding, rattling or other noise.
- (5) The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work, or as a warning of danger.
- (6) The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (7) The use of any mechanical device operated by compressed air, except pneumatic drills, unless the noise thereby created is effectively muffled or reduced.
- (8) The erection, including excavating, demolition, alteration or repair of any building in a residential or business district other than between the hours of 7:00 a.m. and 6:00 p.m. on week days, except in case of urgent necessity in the interest of public safety, and then only with a permit from the City Mayor or his/her designee, which permit may be renewed for a period of three (3) days or less while the emergency continues.
- (9) The creation of any excessive noise on any street adjacent to any school, institution of learning, or court, while the same are in session, or adjacent to any hospital which unreasonably interferes with the working of such institution, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital, or court street.
- (10) The creation of a loud and excessive noise in connection with the loading or unloading of any vehicle or the opening and destruction of bales, boxes, crates and containers.
- (11) The sounding of any bell or gong attached to any building or a premises which is reasonably calculated to disturb a person of ordinary disposition if such person were in the vicinity thereof.
- (12) The shouting and crying of peddlers, hawkers and vendors which disturbs the quiet and peace of the neighborhood.

- (13) The use of a drum, loudspeaker, or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale of merchandise.
- (14) The use of loudspeakers or amplifiers on trucks or other vehicles, except where a specific permit is issued by the City Secretary.

Section 8-53 Outdoor Sound Amplification Permit Required.

No person shall cause to be used any loudspeaker, loudspeaker system, sound amplifier, or other machine or device which produces, reproduces, or amplifies sound outside of buildings or other enclosed structures without first obtaining a permit from the City Secretary as approved by the City Mayor or his/her designee.

Section 8-54 Areas and Time of Operation.

The holder of any permit issued pursuant to this Ordinance shall be permitted to operate as herein defined and the operation of any such mechanical speaker or amplifier shall be permitted only between the hours of 9:00 a.m. and 9:00 p.m. on Monday through Saturday. No such mechanical speaker or amplifier shall be operated on Sunday without the approval of the City Mayor or his/her designee.

Section 8-55 Application for Outdoor Sound Amplification Permit.

Application for a permit required by this Ordinance shall be made to the City Secretary on the form prescribed by the City Council, describing the location where the equipment is to be installed and such other information the City may deem necessary.

Section 8-56 Permit Fee.

The fee to accompany the application required by Section 8-53 shall be Twenty-Five Dollars (\$25.00) for a one-time event or One Hundred Dollars (\$100.00) annually which may be pro-rated on a quarterly basis.

Section 8-57 Issuance of Permit, Term.

The permit required by this Ordinance shall be issued by the City Secretary after approval by the City Mayor or his/her designee for a term not longer than one (1) year. Permits may be issued on not less than a quarterly basis. Variances to the Ordinance may be granted when reasonable by the City Council.

Section 8-58 Revocation.

The City Mayor, for good cause, may revoke the permit issued pursuant to Section

8-53 after giving the permit holder ten (10) days notice to correct any violations of this Ordinance, other ordinances of the City, or violations of state or federal laws.

Section 8-59 Rules and Regulations Governing Motor Vehicles.

The rules and regulations pertaining to permits issued under this Ordinance shall pertain to all permits issued under this Article, except as otherwise specified.

Section 8-60 Permit Required for Amplification on Motor Vehicles

Any person desiring to use a mechanical loudspeaker or amplifier on any truck or any other motor vehicle shall apply to the City Secretary for a permit to operate such loudspeaker equipment or amplifier. The permit fee shall be Twenty-Five Dollars (\$25.00).

Section 8-61 Areas and Time of Operation.

The holder of any permit issued pursuant to this Ordinance shall be permitted to operate as herein defined and the operation of any such mechanical speaker or amplifier on trucks or other vehicles shall be permitted only between the hours of 9:00 a.m. and 8:00 p.m. on Monday through Saturday. No such mechanical speaker or amplifier on trucks or other vehicles shall be operated on Sunday without the approval of the City Mayor or his/her designee.

Section 8-62 Right to Appeal to City Council

Any person objecting to any action of the City Mayor concerning the operation or enforcement of this Ordinance may appeal to the City Council within ten (10) days of the receipt of notice that the permit required by this Ordinance is denied, revoked or shall not be renewed. Any person may seek a variance to this Ordinance from the City Council.

SECTION TWO: PENALTY FOR VIOLATIONS

Any person, firm, or corporation 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 of no more than Five Hundred Dollars (\$500.00), and every day that such violation continues shall constitute a separate offense.

SECTION THREE: REPEALING CLAUSE

Any and all ordinances in conflict with this Ordinance including Ordinance 186, dated October 11, 1999, as amended, are hereby expressly repealed.

SECTION FOUR: SAVINGS CLAUSE

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portion of this Ordinance shall not be affected hereby, it being the intention of the City Council of the City of Shepherd in adopting and of the Mayor in approving this Ordinance, that no portion hereof or provisions or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation.

SECTION FIVE: TEXAS OPEN MEETINGS ACT

It is hereby officially found and determined that the meeting at which this Ordinance was considered was open to the public as required and that the public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION SIX: EFFECTIVE DATE

This Ordinance shall become effective immediately upon its publication as provided by law.

PASSED AND APPROVED after a second reading this 10th day of October 2016.

Sherry Roberts, Mayor *Pro Tem*

ATTEST:

Debra Hagler, City Secretary