

ORD 2016-01-02

**STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF BROOKHAVEN**

ORDINANCE 2016-01-02

**AN ORDINANCE TO AMEND ARTICLE VII, CHAPTER 16 OF THE
CODE OF ORDINANCES FOR THE CITY OF BROOKHAVEN RELATED
TO THE REGULATION, ENFORCEMENT, AND CONTROL OF NOISE
WITHIN THE CITY OF BROOKHAVEN**

WHEREAS, the Mayor and City Council of the City of Brookhaven are charged with the protection of the public health, safety and welfare of the citizens of Brookhaven, and

WHEREAS, pursuant to Section 1.03(b) of the Charter of the City of Brookhaven, inter alia, the City of Brookhaven has the power to define, regulate and prohibit any act, practice, conduct or use of property that is detrimental to health, sanitation, cleanliness, welfare and safety of the inhabitants of the City, and to provide for the enforcement of such standards, and

WHEREAS, the Mayor and City Council of the City of Brookhaven hereby find that by prohibiting and/or defining certain offenses and conduct as set forth below will further the goals set forth in the Charter and protect the health, safety and welfare of the Citizens of Brookhaven,

BE IT ORDAINED by the Mayor and Council of the City of Brookhaven, Georgia, and it is hereby ordained by authority of same, Article VII of Chapter 16 of the Code of Ordinances is hereby amended by striking in its entirety the existing provisions of Article VII of Chapter 16 and substituting therefore the following:

Sec. 16-302. - Definitions.

(a) All terminology used in this article, not defined below, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body. The following words and terms, when used in this article, shall have the following meanings:

(1) A-weighting is the electronic filtering in sound level meters that models human hearing frequency sensitivity.

(2) Background sound level is the total sound pressure level in the area of interest excluding the noise source of interest.

(3) Commercial or business property category is all property which is used primarily for the sale of merchandise or goods, or for the performances of service, or for office or clerical work. Any property zoned multi-use, as that term may be used in Chapter 27 shall be deemed commercial or business property under this Chapter.

(4) Construction is any site preparation, assembly, erection, repair, alteration or similar action, or demolition of buildings or structures.

(5) Daytime hours shall mean the hours of 7:00 a.m. to 11:00 p.m., Monday through Thursday, 7:00 a.m. to 11:59 p.m. Friday, 9:00 a.m. to 11:59 p.m. Saturday, and 9:00 a.m. to 11:00 p.m. Sunday.

(6) Decibel (dB) is the unit of measurement for sound pressure level at a specified location.

(7) dBA is the A-weighted unit of sound pressure level.

(8) dBC is the C-weighted unit of sound pressure level.

(9) Emergency is any occurrence or set or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

(10) Emergency work is any work or action performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

(11) Impulsive sound is a sound having a duration of less than one second with an abrupt onset and rapid decay.

(12) Industrial or manufacturing property category is any property which is used primarily for manufacturing or processing.

(13) Institutional property category is any property which is used primarily for public purposes such as city hall or a city park.

(14) Muffler is a sound-dissipative device or system for attenuating the sound of escaping gases of an internal combustion engine where such a device is part of the normal configuration of the equipment.

(15) Multi-family dwelling is any building or other shelter that has been divided into separate units to house more than one (1) family.

(16) Nighttime shall mean the hours of 11:00 p.m. 7:00 a.m., Monday through Friday, 12:00 a.m. to 9:00 a.m. Saturday, and 12:00 a.m. to 9:00 a.m. Sunday.

(17) Noise is any sound which annoys or disturbs humans or causes or tends to cause an adverse psychological or physiological effect on humans.

(18) Noise disturbance is any sound that:

- (i) Endangers the safety or health of any person;
- (ii) Disturbs a reasonable person of normal sensitivities; or
- (iii) Endangers personal or real property.

(19) Noise sensitive facility means any facility whose operations may be detrimentally impacted by excessive sound levels. Such facilities include, but are not limited to, schools, hospitals, and places of worship.

(20) Octave band is all the components in a sound spectrum whose frequencies are between two (2) sine waves components separated by an octave.

(21) Real property line is the line, including its vertical extension that separates one parcel of real property from another.

(22) Residential property category is all property established as a residential zoning category by Chapter 27 of the ordinances of the City of Brookhaven, except for multi-use zoning categories where there may be residential components.

(23) Sound level meter (SLM) is an instrument used to measure sound pressure levels conforming to type 1 or type 2 standards as specified in ANSI Standard S1.4-1983 or the latest version thereof.

(24) Sound pressure level (SPL) is twenty (20) multiplied by the logarithm, to the base ten, of the measured sound pressure divided by the sound pressure associated with the threshold of human hearing, in units of decibels.

Sec. 16-303. - Sound level limitations.

- (a) No person shall cause, suffer, allow, or permit the operation of any sound source in such a manner as to create a sound level that exceeds the sound level limits set forth in table 1 when measured at or within the real property line of the receiving property using the slow response setting unless otherwise noted. Such a sound source would constitute a noise disturbance.

Table 1 Sound Level Limits by Receiving Property

| Receiving Property Zoning Category | Day of Week | Time of Day | Distance from Sound Source | Sound limitation |
|---|-------------------------|--------------------|---|----------------------------------|
| Residential or noise sensitive facility | Everyday | Daytime | 0-50 feet 51-150 feet 151-300 feet Over 300 feet | 80 dB 75 dB 65 dB 55 dB |
| Residential or noise sensitive facility | Sunday through Thursday | Nighttime | 0-50 feet 51-150 feet 151-300 feet Over 300 feet | 70 dB 65 dB 55 dB 50 dB |
| Residential or noise sensitive facility | Friday and Saturday | Nighttime | 0-50 feet 51-150 feet 151-300 feet Over 300 feet | 75 dB 65 dB 55 dB 50 dB |
| Commercial | Sunday to Friday | Daytime | 0-50 feet 51-150 feet 151-300 feet Over 300 feet | 80 dB 75 dB 65 dB 55 dB |
| Commercial | Sunday to Thursday | Nighttime | 0-50 feet 51-150 feet 151-300 feet Over 300 feet | 70 dB 65 dB 55 dB 50 dB |
| Commercial | Friday and Saturday | Daytime | 0-50 feet 51-150 feet 151-300 feet Over 300 feet | 85 dB 80 dB 70 dB 65 dB |
| Commercial | Friday and Saturday | Nighttime | 0-50 feet 51-150 feet 151-300 feet Over 300 feet | 75 dB 70 dB 65 dB 55 dB |
| Industrial | Everyday | Anytime | 0-50 feet 51-150 feet 151-300 feet Over 300 feet | 85 dB 80 dB 70 dB 65 dB |

- (b) If the noise is an impulsive sound, the fast response setting shall be used and the daytime limits of table 1 shall be increased by ten (10) dBA.
- (c) In a multi-family dwelling, it shall be unlawful to create or permit to be created any noise that exceeds the daytime limit of seventy-five (75) dBA and the

nighttime limit of fifty-five (55) dBA as measured from the closest neighbor's dwelling.

- (d) In places of public entertainment having a capacity of five thousand (5,000) or more persons, it shall be unlawful to create or permit to be created any noise that exceeds an average of ninety-five (95) dBC in any ten-minute period from 7:00 a.m.—12:00 a.m. Sunday through Thursday and from 7:00 a.m. to 1:00 a.m. for events commencing on Friday or Saturday. The sound level limit for all other times shall be fifty-five (55) dBC. The sound shall be measured at a point which is found by traveling a straight line distance from the center of the sound board through the center rear of the facility a distance of five hundred (500) feet or to the property line of the facility, whichever is less. The measurement assumes that the sound board is not more than one hundred (100) feet from the center stage. The 500-foot measurement shall be reduced one (1) foot for each foot that the sound board is more than one hundred (100) feet from center stage.
- (e) In interpreting and applying the times and values in Table 1, it is the intent of the City Council that the times be interpreted to provide maximum protection from undesirable noise possible.

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I know a large purpose of rewriting Brookhaven's noise ordinance is to allow for outdoor music. Therefore, this section is of particular importance. Where does City of Brookhaven anticipate having concerts? That would influence specifics.

Sec. 16-304. - Exemptions.

- (a) Noise generated from municipally sponsored or approved celebrations or events shall be exempt from the provisions of section 16-303(a) and (b).
- (b) The following are exempt from the sound level limits of section 16-303(a), (b), and (c):
- (1) Sound by public safety vehicles, emergency signaling devices, or authorized public safety personnel for the purpose of alerting persons to the existence of an emergency;
 - (2) Noise from an exterior burglar alarm of any building, provided such burglar alarm shall terminate its operation within five (5) minutes of its activation if the sound is uninterrupted or ten (10) minutes if intermittent;
 - (3) Noise from any automobile alarm, provided such alarm shall terminate its operation within five (5) minutes of its activation if the sound is uninterrupted or ten (10) minutes if the sound is intermittent;
 - (4) The generation of sound in situations within the jurisdiction of the Federal Occupational Safety and Health Administration;

- (5) Organized band and/or sports league activity sponsored by a school or the City of Brookhaven that is otherwise in compliance with the Code of Ordinances of the City of Brookhaven, Georgia;
- (7) Unamplified bells, chimes or carillons while being used in conjunction with religious services between the hours of 7:00 a.m.—10:00 p.m.;
- (8) Emergency work;
- (9) Events with amplified sound that are operating within the time and volume parameters set forth in an approved special administrative permit;

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Replaced Alpharetta's 13-22(b)(5)&(6) with Roswell's 8.8.3(b)(10). Provides less ambiguity in interpretation.

Sec. 16-305. - Restricted uses and activities.

Notwithstanding the provisions of section 1-2(a) and the exceptions above, the following standards shall apply to the activities or sources of sound set forth below:

- (1) Non-commercial or non-industrial power tools used for landscaping and yard maintenance shall not be operated between the hours of 7:00 p.m. and 7:00 a.m., or on Saturday or Sunday before the hour of 9:00 a.m. At all other times, the limits set forth in section 1-2(a) do not apply to non-commercial or non-industrial power tools and landscaping and year maintenance equipment, provided that all motorized equipment is operated with a functioning muffler.
- (2) Commercial or industrial power tools used for landscaping and yard maintenance shall be operated with a muffler. All motorized equipment used in these activities shall not be operated on a residential property or within two hundred fifty (250) feet of a residential property line, between the hours of 7:00 p.m. and 7:00 a.m. on weekdays, or before the hour of 9:00 a.m. or after the hour of 5:00 p.m. on Saturday, or at any time on Sunday, unless:
 - a. Such activities are deemed emergency work, or
 - b. Such activities meet the limits set forth in section 1-2(a).At all other times, the limits set forth in section 1-2(a) do not apply to commercial or industrial power tools and landscaping and yard maintenance equipment.
- (3) Construction and demolition activity shall not be performed between the hours of 7:00 p.m. and 7:00 a.m. on weekdays, before the hour of 9:00 a.m. or after the hour of 5:00 p.m. on Saturday, or at any time on Sunday, unless:
 - a. Such activities are deemed emergency work; or

b. Such activities meet the limits set forth in section 1-2(a).

This provision shall not apply if the chief of police determines that the loss or inconvenience that would result to any party in interest is of such a nature as to warrant special consideration. In such cases, the chief of police may grant a renewable permit for a period not to exceed ten (10) days for this work to be done within the hours of 10:00 p.m. to 7:00 a.m.

- (4) Domesticated animals may not make any vocalizations (including barking, baying, howling, crying, or making any other noise) for more than ten (10) minutes without interruption or more than thirty (30) minutes if intermittent.
- (5) The collection of trash or refuse in residential districts is prohibited between the hours of 9:00 p.m. and 7:00 a.m.
- (6) No person shall operate, play, or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, or similar device in such a manner as to create a continuing noise disturbance at fifty (50) feet from such device, when operated in or on a motor vehicle on a public right-of-way or public space.

Sec. 16-306. - Procedures for the determination of sound levels.

- (a) Insofar as practicable, sound will be measured while the source under investigation is operating at normal, routine conditions and, as necessary, at other conditions, including but not limited to, design, maximum and fluctuating rates. All noise measurements shall be made at or within the property line of the impacted site, unless otherwise directed in this article. When instrumentation cannot be placed at or within the property line, the measurement shall be made as close thereto as is reasonable. For the purposes of this article, noise measurements are measurements are measured on the A- or C-weighted sound scale, as applicable, of a sound level meter of standard design and quality having characteristics established by ANSI.
- (b) Measurements shall be taken by police officers appropriately trained in the use of a sound level meter.

Sec. 16-307. - Special variances.

- (a) The chief of police or the chief's designated representative shall have the authority, consistent with this article, to grant special variances.

- (b) Any person seeking a special variance pursuant to this article shall file an application with the chief of police or the chief's designated representative. The application shall contain information which demonstrates that bringing the source of sound into compliance with this article would constitute an unreasonable hardship on the applicant, on the community, or on the other persons. Notice of an application for a special variance shall be given by the chief or the chief's representative to persons who frequent the area of the sound or activity and who may be adversely affected by the granting of the variance. Any individual who claims to be adversely affected by allowance of the special variance may file a statement with the chief or the chief's representative containing any information to support such individual's claim.
- (c) In determining whether to grant or deny the application, the chief or the chief's designated representative shall balance the hardship to the applicant, the community, and other persons of not granting the special variance against the adverse impact on the health, safety and welfare of persons affected, the adverse impact on property affected, and any other adverse impact of granting the special variance. Applicants for special variances may be required to submit any information the chief or the chief's representative may reasonably require. In granting or denying an application, the chief or the chief's representative shall place on public file a copy of the decision and the reasons for denying or granting the special variance.
- (d) Special variances shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The special variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the special variance shall terminate it and subject the person holding it to those provisions of this article regulating the source of sound or activity for which the special variance was granted.
- (e) Application for extension of time limits specified in special variances or for modification of other substantial conditions shall be treated like applications for initial special variances.
- (f) The chief of police or the chief's designated representative may issue guidelines approved by city council defining the procedures to be followed in applying for a special variance and the criteria to be considered in deciding whether or not to grant a special variance.

Sec. 16-308. - Enforcement procedures; miscellaneous.

(a) Except as provided in subsection (b) of this section, the city may prosecute noise related violations by issuance of a city ordinance citation, in which case, the penalty for a violation shall be as set forth in section 1-10 of chapter 1 of the Code. In addition to issuing a fine as provided in section 1-10, or in lieu thereof, the municipal court judge may issue an order requiring immediate abatement of any sound source alleged to be in violation of this section.

1. Notwithstanding the generally punishments established above, the fine for a first conviction of this Chapter shall be not less than \$200, in addition to any other penalty imposed by the Court.

2. Upon a second conviction within 12 months, measured from the date of the conviction, the Court shall impose a fine of not less than \$500, in addition to any other penalty imposed by the Court.

3. Upon a third conviction within 24 months, measured from the date of the earliest conviction, the Court shall impose a fine of not less than \$1000, in addition to any other penalty imposed by the Court

4. Upon a third conviction within 24 months, measured from the date of the earliest conviction, if the offender has been granted or has applied for an alcohol license as a restaurant or as a late night establishment, such license shall automatically be suspended as of the date of the conviction, and proceedings initiated to revoke such alcohol license in accordance with the City of Brookhaven Alcohol Ordinance. The Court shall refer in such third convictions to the attention of the City Manager or her or his designee for action consistent with this paragraph.

(b) Whenever any city resident shall complain to the police department that a dog which habitually barks, howls or yelps, or a cat which habitually cries or howls, is being kept by any person in the city, a city law enforcement officer, prior to the issuance of a citation, shall notify the owner of such dog or cat that a complaint has been received. If the notice given to the owner alleged to be keeping a dog or a cat in violation of this article is ineffective, then the police shall issue a formal warning to the owner of such dog or cat that the owner shall take whatever steps necessary to alleviate the barking, howling, yelping or crying. If the warning given to the owner is ineffective, a citation shall be issued to the owner of the dog or cat.

(c) No provision of this section shall be construed to impair any common law or statutory cause of action, or legal remedy therefore, of any person for injury or damage arising from any violation of this section or from other law.

Commented [3]:
Cite to Brookhaven penalties to violation of city ordinance

ORD 2016-01-02

SO ORDAINED, this 12th day of January, 2106

John Arthur Ernst, Jr.
Mayor

ATTEST:

APPROVED AS TO FORM

Susan Hiott
City Clerk

Christopher D. Balch
City Attorney