

This is the Draft Ordinance that went to Committee on 4-30-14

STATE OF GEORGIA

First Reading:

Second Reading:

COUNTY OF FULTON

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF ROSWELL, GEORGIA, REGARDING UNNECESSARY NOISE

WHEREAS, the Mayor and Council are the governing authority of the City of Roswell, Georgia; and

WHEREAS, it is determined that certain conditions or things are public nuisances and against the public health, safety and welfare; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF ROSWELL, GEORGIA and it is hereby ordained and established by said authority and the Mayor and Council do hereby adopt the following Ordinance:

1.

"Section 8.8.3 Types of nuisances." of the Code of Ordinances of the City of Roswell is hereby amended by deleting Subsection (s) in its entirety and substituting therefor a new Section 8.8.3 (s), *Noise; creating unnecessary noise*, to read as follows:

8.8.3 (s) Noise: creating unnecessary noise.

Excessive and disturbing sound is a serious hazard to the public health and welfare, safety, and the quality of life. A substantial body of science and technology exists by which excessive and disturbing sound may be substantially abated. People have a right to and should be ensured an environment free from excessive and disturbing sound that may jeopardize their health, safety, or welfare or degrade the quality of life.

In order to ensure attractive residential and commercial areas, it is necessary that an audibly satisfying environment be maintained. The City of Roswell is more likely to attract permanent residents and commercial enterprises if it controls and maintains appropriate noise quality and the residents will ultimately gain financial improvements and protection in their quality of life as a result of these regulations.

(1) Definitions

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:

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

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

Boom Box means any self-contained, portable, hand-held music or sound amplification or reproduction equipment capable of emitting sound.

Boom Car means any vehicle with loudspeakers, amplifiers, radio receiving sets, musical instruments, phonographs or other equipment capable of producing, reproducing or emitting noise which is cast upon public property or private property.

C-weighting sound level is the sound pressure level in sound level meters using the C-weighting network as specified in ANSI or its successor body documents for sound level meters. This level is postscribed dB(C) or dBC and captures a lower frequency sound.

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.

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

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

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

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

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

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.

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

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

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

Legal holidays recognized by Roswell include New Years Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.

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.

Multi-family dwelling is any multifamily structure, multifamily building, or other facility promised and/or leased to a residential tenant or tenants for use as a home, residence, or sleeping unit. This definition includes, but not limited to, multifamily dwellings, multifamily apartment units, boarding houses, rooming houses, group homes and flats.

Noise is any sound which annoys or disturbs humans or causes or tends to cause an adverse psychological or physiological effect on humans or violates this Ordinance.

Noise disturbance is any sound that (a) endangers the safety or health of any person, (b)

disturbs a reasonable person of normal sensitivities, or (c) endangers personal or real property or violates this Ordinance.

Noise nuisance is the making, continuing or causing to be made or continued acts which are done or accomplished or carried on in such a manner, or with such volume, intensity, or with continued duration so as to annoy, to distress, or to disturb the quiet, comfort, or repose of any person of reasonable nervous sensibilities within the vicinity or hearing thereof, or so as to endanger or injure the safety or health of humans or animals, or so as to interfere with the physical well being of humans or animals, or so as to endanger or injure personal or real property except in the case of alerting persons to an emergency; or the operation of emergency vehicles; or motor vehicles while moving on a public right-of-way, public waterway, airport runway, or railway; or sounds produced by any governmental body in the performance of a governmental function; or sounds generated at a scheduled and permitted function, parade or outdoor celebration, or any violation of this Ordinance.

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.

Octave band is all the components in a sound spectrum whose frequencies are between two sine wave components separated by an octave.

Public space property category is any real property or structures thereon that is owned, leased, or controlled by a governmental entity.

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

Residential property category is all property on which people legally live.

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 S 1.4-1983 or the latest version thereof.

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

Weekday is any day, Monday through Friday that is not a legal holiday.

(2) Sound level limitations.

(a) No person shall cause, suffer, allow, or permit a domestic animal or 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

<i>Receiving Property Category</i>	<i>Time</i>	<i>Sound Level Limit (dBA)</i>	<i>Sound Level Limit (dBC)</i>
Residential, public space,	7:00 a.m. to 11:00 p.m.	70	70

institutional, or noise sensitive facility	11 :00 p.m. to 7:00 a.m.	60	60
Office, Commercial or business	7:00 a.m. to 11:00 p.m.	70	70
	11 :00 p.m. to 7:00 a.m.	65	65
Industrial or manufacturing	At all times	70	70

(b) If the noise is an impulsive sound, the fast response setting shall be used and the daytime (7:00 a.m. to 11:00 p.m.) limits of Table 1 shall be increased by ten (10) dBA.

(3) Exemptions

(a) Noise generated from municipally sponsored or approved celebrations or events shall be exempt from these provisions.

(b) The following are exempt from the sound level limits:

(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 not intermittent or ten (10) minutes if intermittent;

(3) Noise from any automobile alarm, provided such alarm shall terminate its operation within five (5) continuous minutes of its activation if the sound is not intermittent or ten (10) continuous 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) Noise resulting from any practice or performance sponsored by or associated with the educational process administered by a recognized institution of learning, including, but not limited to band, choir, and orchestral performances;

(6) ~~Noise that results from the activities of an organized band or sports league between the hours of 7:00 a.m. and 12:00 a.m.;~~

(7) Carillons, chimes or unamplified bells while being used in conjunction with religious services between the hours of 7:00 a.m. - 10:00 p.m.;

(8) Emergency work approved by the Chief Building Inspector of the City;

(9) Surface carriers engaged in commerce by railroad;

(10) Events with amplified or un-amplified sound that are operating within the parameters set forth in an approved special events permit as defined in Article 14.3 of the Code of Ordinances of the City of Roswell, Georgia.

(11) Organized **band and/or** sports league activity sponsored by a school or the City of Roswell that is otherwise in compliance with the Code of Ordinances of the City of Roswell, Georgia.

(12) Noise that results from landscaping and lawn maintenance between the hours of 7:00 a.m. and 8:00 p.m.

(13) Noise that results from construction both private and commercial between the hours of 7:00 a.m. and 8:00 p.m.

(4) Restricted Uses and Activities.

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

(a) Non-commercial or non-industrial power tools used for landscaping and yard maintenance shall not be operated between the hours of 10:00 p.m. and 7:00 a.m., unless such activities can meet the applicable limits set forth in subsection (2). At all other times, the limits set forth in subsection (2) do not apply to non-commercial or non-industrial power tools and landscaping and yard maintenance equipment, provided that all motorized equipment is operated with a functioning muffler.

(b) 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 250 feet of a residential property line, between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, or between the hours of 10:00 p.m. and 9:00 a.m. on weekends, unless:

(1) such activities are deemed emergency work, or

(2) such activities meet the limits set forth in subsection (2).

At all other times, the limits set forth in subsection (2) do not apply to commercial or industrial power tools and landscaping and yard maintenance equipment.

(c) Owners and the agents of owners of domesticated animals shall not permit any vocalizations (including barking, baying, howling, crying, or making any other noise) for more than ten (10) continuous minutes without interruption or more than thirty (30) minutes if intermittent. Each occurrence will result in a separate offense.

(d) Personal or commercial vehicular music amplification or reproduction equipment, including, but not limited to boom cars, shall not be operated in such a manner as to be plainly audible at a distance of 50 feet in any direction from the equipment between the hours of 8:00 p.m. and 10:00 a.m. Between the hours of 10:00 p.m. and 8:00 a.m. such equipment shall not be operated in such a manner that it is plainly audible at a distance of 25 feet in any direction.

(e) Boom boxes, or any similar device, shall not be operated in a public place or public right-of-way in such a manner as to be plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 a.m. and 10:00 p.m. Between the hours of 10:00 p.m. and 8:00 a.m., such equipment shall not be operated in such a manner that it is plainly audible at a distance of 25 feet in any direction.

(f) No amplified sound or outdoor performances (with or without amplified sound) shall be permitted after 10:00 P.M. Sunday through Thursday or after 11:00 P.M. Friday or Saturday. For purposes of this section "outdoor performance" shall include activities conducted indoors or under a roof but open to the outside by means of open windows, doors, screens or other openings but excluding the normal opening and closing of doors for entry and exit.

(5) Code Enforcement Officers.

(a) Where the provisions of this ordinance require the measurement of sound with the use of a sound level meter, Code Enforcement Officers or Police Officers of the City shall make such measurement.

(b) Upon occurrence of a violation of this Article, Officers or police officers having jurisdiction in the area where the violation takes place, may issue a citation/summons for the violation returnable to the Municipal Court of Roswell. Penalties for violations of this Article will be governed by subsection (8).

(6) 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 ordinance **or when directly observed by an officer.** 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 ordinance, noise measurements are measured on the A- weighted sound **level or the C-weighted sound level** as applicable, of a sound level meter of standard design and quality having characteristics established by ANSI.

(b) ~~The sound level meter and calibrator must be re-certified annually at a laboratory approved by the Chief of Police or designee.~~ A field check of meter calibration and batteries must be conducted before and after every set of measurements, and at least every hour as necessary.

(c) ~~Total and neighborhood residual sound level measurements shall be taken in accordance with procedures established and approved by the Chief of Police or designee.~~ Calculation of source sound levels shall conform with accepted practice established by ANSI.

(7) Requests for Temporary Relief or Stay.

(a) Any person requesting temporary relief or a stay from the enforcement of this ordinance shall apply to the Zoning Administrator or designee for a special administrative permit for a period of time not to exceed thirty (30) days. The Zoning Administrator or designee has discretion to consider and grant or deny the special administrative permit (with such conditions as may be warranted), if strict enforcement of this ordinance will result in exceptional and undue hardship to the applicant. Under no circumstances shall the Zoning Administrator or designee grant a stay of enforcement of this ordinance for more than thirty (30) days within any six (6) month period.

(b) Applications for special administrative permits shall be on a form prescribed by the Zoning Administrator or designee which shall, among other matters, address the nature of the noise, attenuation measures, and the hardships to the applicant and others if the permit is not granted.

(c) A special administrative permit may be revoked and the issuance of future permits withheld, if there is a:

- (1) Violation of any conditions of the permit;
- (2) Material misrepresentation of fact in the permit application; or,
- (3) Material change in any of the circumstances relied upon by the zoning administrator or designee in granting the permit.

(d) No special administrative permit shall be granted for amplified sound.

(e) No special administrative permit shall be authorized to delete, modify, or change in any manner any requirement imposed as a condition of zoning or as a condition of a special or conditional land use permit imposed by the City Council.

(f) Appeals of any special administrative permit decision made by the Zoning Administrator or designee shall be to the City Council.

(8) Enforcement Procedures.

(a) The City may prosecute noise related violations by issuance of a city ordinance citation. If an ordinance violation citation is issued to the owner and it is determined by the municipal court that this chapter has been violated, the person may be punished by a fine not to exceed \$1,000 and/or incarceration up to six (6) months. Penalties for the first violation of this code section shall be a minimum fine of \$100. Subsequent violations of the same provisions of the code sections by the same owner or agent shall be the determination

of the prosecutor.

(b) In addition to issuing a fine as provided, 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. Failure to abate such noise results in contempt of court.

(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.

2.

All ordinances, parts of ordinances and regulations in conflict herewith are repealed as of the effective date of this Ordinance.

3.

Should any section of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

4.

It is the intention of the Mayor and Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances, City of Roswell, Georgia and the sections of this Ordinance may be renumbered to accomplish such intention.

5.

This Ordinance shall take effect and be in force from and after the date of its adoption, the public welfare demanding it.

The above Ordinance was read and approved by the Mayor and Council of the City of Roswell, Georgia on the _____ day of _____, 2014.