

ORDINANCE NO. 262e02

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTHMAYD, TEXAS, AMENDING ORDINANCE 262 OF THE CITY OF SOUTHMAYD, TEXAS, BY ADDING PARAGRAPHS (i) & (j) TO SECTION 3; PROVIDING A REPEALER CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** the City of Southmayd, Texas, is authorized by statute to promote and protect the general health, safety and welfare of persons residing in and adjacent to the City; and

**WHEREAS,** the City Council of the City of Southmayd, Texas, has determined that a pleasing, attractive environment is important to a desirable community in which to live and do business; and the following regulations are a contributing factor to achieving that goal and to promoting the general health, safety and welfare of persons residing in and adjacent to the City.

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

**Section 1. FINDINGS INCORPORATED.**

That the findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

**Section 2. AMENDMENT TO ORDINANCE 262.**

That Section 3 of Ordinance 262 is amended by adding Paragraphs (i) and (j) and shall read as follows:

**“Section 3. NOISE.**

(i) Loud, disturbing and unnecessary noise prohibited.

1. A noise is presumed to be unreasonable if the noise exceeds a decibel level of 85 after the person making the noise receives notice from a peace officer that the noise is a public nuisance.

2. The creating of any unreasonably loud, disturbing and unnecessary noise within the corporate limits of the city is prohibited. Any noise of such character, intensity or duration as to be detrimental to the life or health of any individual, or in disturbance of the public peace and welfare, is prohibited.

3. It shall be unlawful for any person to discharge into the open air the exhaust of any steam engine, stationary internal-combustion engine, motor vehicle or motorboat engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom. The emitting of loud or excessive noise through a muffler by deliberate backfire, or the use of mufflers other than type manufactured for said type of internal-combustion engine to limit loud noise shall be prohibited.

4. The creation of any excessive noise on any street adjacent to any school, church, institution of learning, hospital or any other public place, which unreasonably interferes with working or sessions thereof, is hereby prohibited.

5. It shall be unlawful for any person to use or operate, or cause to be used or operated, any mechanical or electrical device, machine, apparatus or instrument to intensify, amplify or reproduce the human voice or any other sound, on any public street within the corporate limits of the city, except as otherwise allowed by issuance of a permit for the use of amplified sound.

6. It shall be unlawful for any person to use or operate, or cause to be used or operated, any such mechanical or electrical device, machine, apparatus or instrument, whether involving amplification or not, that emits or causes any loud or excessive noise, in any building or on any premises in the city, whereby the sound emitted therefrom is cast directly upon the public streets or places, or where such device is maintained and operated for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed or operated that the sounds coming therefrom can be heard to the inconvenience or annoyance of travelers upon any street or public place, or of persons in neighboring premises, except as otherwise allowed by issuance of a permit for the use of amplified sound.

7. Measurement of noise shall be made with a sound decibel-level meter.

8. A permit issued to allow amplified sound shall be issued to authorize amplification between the hours of 9:00 a.m. and 11:00 p.m. Said permit shall authorize the use of amplified sound for the hours and sound pressure levels authorized in this Section.

(a) Outdoors: A person commits an offense by operating sound equipment, producing sound or allowing the same in an outdoor venue in excess of the following average noise levels at the property line:

9:00 a.m. to 7:00 p.m. a maximum average level of 85 decibels

7:01 p.m. to 11:00 p.m. a maximum average level of 75 decibels

(b) Indoors: A person commits an offense by operating sound equipment, producing sound or allowing the same in an indoor venue in such a manner that the sound may be heard in an adjacent building at such a level that a reasonable and prudent person would consider a nuisance, or in excess of the following average noise levels at the property line:

9:00 a.m. to 7:00 p.m. a maximum average level of 85 decibels

7:01 p.m. to 11:00 p.m. a maximum average level of 75 decibels

(c) Outdoor Music Festival: A person commits an offense by operating sound equipment, producing sound or allowing the same in conjunction with an authorized outdoor music festival in excess of the following average noise levels at the mix position:

9:00 a.m. to 7:00 p.m. a maximum average level of 100 decibels

7:01 p.m. to 11:00 p.m. a maximum average level of 95 decibels

(d) For the purposes of this Section, an outdoor music festival is considered authorized when officially sponsored or sanctioned by the City.

(e) For the purposes of this Section, an average noise level is obtained by gathering three (3) separate sound decibel-level measurement readings within a five (5) minute time period, and taking the average of the three readings.

(f) For the purposes of this Section, the property line is considered that closest boundary line, be it a fence, wall, barricade, or natural landmark that separates the source of noise from the general public or the pavement edge of the public right-of-way, whichever is closer.

9. Exemptions. The following uses and activities shall be exempt from the noise-level regulations herein specified:

(a) Noises not directly under the control of the property user.

(b) Noises emanating from construction and maintenance activities between the hours of 7:00 a.m. and 7:00 p.m.

(c) Noises of safety signals, warning devices and emergency pressure relief valves.

(d) Transient noise of moving sources, such as automobiles, trucks, trains, and airplanes.

(e) The use of bells or recordings for playing chimes, tolling, time, or similar purposes by churches and schools.

(f) The use of loudspeakers or amplifiers on property owned by the S&S School District for activities such as regularly scheduled interscholastic games, track meets, and similar purposes which are officially sponsored by the school district.

(g) The use of loudspeakers or amplifiers in a City park or facility when used during an official City event.

(h) Emergency vehicles when operated by authorized agents of the federal, state, county or local government or a governmental subdivision.

10. In the future the City Council may designate sections of the City as entertainment districts and establish rules governing the use of amplified sound for said districts upon the creation thereof by amendment to this Section.

(j) Tires.

1. Unmounted vehicle, trailer or tractor tires shall be prohibited outdoors on any residential, commercial, agricultural or industrial property in the corporate limits of the city.

2. Exemptions. It shall be an exemption from the prohibition stated herein if the property is located in a commercially zoned district and is operated by a tire retail shop, provided such shop has an authorized tire disposal service remove the tires no less than once per week."

**Section 3. REPEALER CLAUSE.**

Any provision of any prior ordinance of the City, whether codified or uncodified, which is in conflict with any provision of this Ordinance, is hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City, whether codified or uncodified, which are not in conflict with the provisions of this Ordinance, shall remain in full force and effect. In particular, this Ordinance amends Ordinance Number 262.

**Section 4. SEVERABILITY CLAUSE.**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**Section 5. PENALTY CLAUSE.**

Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be guilty of a misdemeanor and upon conviction, shall be fined a sum not to exceed \$2,000.00 for each offense, and each and every violation or day such violation shall continue or exist, shall be deemed a separate offense.

**Section 6. EFFECTIVE DATE.**

This Ordinance shall become effective immediately upon its passage and publication as required by law.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Southmayd, Texas, on this the 10<sup>th</sup> day of September, 2013.

APPROVED:

  
Tom Byler, Mayor

ATTEST:

  
Lisa Stewart, City Secretary

APPROVED AS TO FORM:

  
Mark Goldstucker, City Attorney