

ORDINANCE NO. 2002 - ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, AMENDING DIVISION 3 OF ARTICLE 3 OF CHAPTER 34, ENVIRONMENT, OF THE SAN MARCOS CITY CODE TO ADD REGULATIONS PERTAINING TO NOISE FROM VEHICLES AND FROM PARTIES IN RESIDENTIAL AREAS; INCLUDING PROCEDURAL PROVISIONS; PROVIDING FOR PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. The City staff has presented evidence to the City Council that loud noise and parties in residential areas of the City disturb the area residents, detrimentally affect the integrity and livability of the areas, and reduce property values.

2. The Police Department has established a Community Policing Planning Model to examine long term solutions to loud noise and parties that disturb the residential areas of the community and reduce property values.

3. The Police Department has recommended that the City Council pass an ordinance that allows police officers to restrict loud noises from motor vehicles, that allows the city to hold property owners responsible for the noise violations of their tenants, and that allows city staff to interrupt electrical service to a residence that is the source of an imminent threat to public safety.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. That Chapter 34, Article 3, Division 3 of the San Marcos City Code, is amended to read as follows (underlining indicates added language; ~~an overstrike~~ indicates deleted language):

DIVISION 3. NOISE

Sec. 34.090. Definitions.

In this division:

Party means a planned or unplanned gathering of people.

Property manager means a person, other than an owner or tenant, who leases, maintains, or cares for real property owned by another. The term includes managers and assistant managers of apartment complexes and owners or employees of property management companies.

Residence means a dwelling unit in an apartment, townhouse, duplex or other multi-family

residential structure, or a single-family residence. Residence includes the entire premises of a residence, including the residence building, garage, carport, driveway and yard, and adjacent common areas, parking areas, sidewalks and streets insofar as the activity in common areas is a continuation of activities inside the residence.

Residential area means an area:

- (1) That is within a residential zoning district, or
- (2) Within which, in a one-block area, a majority of the buildings are designed or used for residential purposes, such as one-family or two-family dwellings, apartments, townhomes and condominiums.

Verified noise complaint means a complaint of excessive noise at a residence that is verified by personal observation of a police officer to constitute a violation of a state law or of any provision of this Code.

Sec. 34.091. Noise from motor vehicles.

(a) It is unlawful for any person operating or controlling a motor vehicle to operate any radio, stereo receiver, compact disc player, cassette tape player, or other similar device in the motor vehicle in such a manner that, when operated, it is:

- (1) audible in a public place or on private property other than that owned or occupied by the person at a distance of 30 feet or more from the vehicle, or
- (2) causes vibration that can be felt at a distance of 30 feet or more from the vehicle.

(b) It shall be a defense to prosecution under this section that a vehicle was owned and operated by a business that, in the required and normal course of business, uses sound making devices in a motor vehicle, and the sound or vibration was being made between 8:00 a.m. and 9:00 p.m.

Sec. 34.092. Nuisance.

It is unlawful for a person who owns, occupies, or acts as a property manager for a residence to allow the residence to become or to remain a nuisance due to excessive noise.

Sec. 34.093. Notification.

(a) If a property owner or property manager registers his property with the police department, then the police department will notify the property owner or property manager, by email, of verified noise complaints that occur on the registered property. Registration information must be submitted on forms provided by the police department.

(b) After notification of a verified noise complaint, the property owner, the property owner's designee, or the property manager may request a meeting with the chief of police to resolve the noise problems that are occurring on the registered property. If a meeting results in a resolution to the problems, then the chief will not file a petition under section 34.094. If there is no resolution to the problems, then the chief may proceed under 34.094.

Sec. 34.094. Noise complaints; hearing.

(a) If there are two or more verified noise complaints at a residence within any sixty day period, the chief of police or an authorized representative may file a petition with the municipal court judge to have the residence declared to be a nuisance due to excessive noise.

(b) The property manager and/or property owner will be notified of the hearing:

(1) By personally serving the property manager and property owner in writing,

(2) By certified letter to the property manager and property owner at his or her post office address, or

(3) If personal service cannot be obtained and the property manager's or property owner's post office address is unknown

(a) By publication at least twice within 10 consecutive days in a newspaper of general circulation in the city, or

(b) By posting the notice on or near the front door of the residence.

(c) The police department will provide notice of the hearing to the tenants of the residence by certified mail. If the tenants are unknown, the chief of police will request the names of the tenants from the property owner or manager. If the property owner or property manager refuses to provide the names of the tenants, then the tenants will not be notified of the hearing.

(d) At the hearing the judge will receive evidence from all interested parties on the issue of whether the residence should be declared a nuisance.

(e) The criteria which the court will use to determine whether the residence should be declared a nuisance are:

(1) The number of verified noise complaints the police have received for that residence within a six month time period,

(2) The magnitude of the noise,

(3) Whether the residents cooperated with the police,

- (4) Whether the police discovered that other offenses were being committed at the residence when the police arrived at the residence,
- (5) Whether the residents resumed the noise after the police left,
- (6) The number of people who were at the residence when the police responded, and
- (7) Any other factors the judge determines are relevant.

(f) The standard of proof at the hearing is a preponderance of the evidence.

Sec. 34.095. Notice to property manager and tenants of nuisance determination.

(a) If the court determines that a residence has become a nuisance, and if the property manager or tenants were not at the hearing, the chief of police will give the property manager or tenants, as applicable, written notice of this determination.

(b) Written notice shall be provided in the manner described in subsection 34.094.

(c) If there is another police response to a verified noise complaint at the residence after the court's determination and after the chief of police has given written notice of the determination, then the property manager and tenants will each receive a citation for allowing the residence to remain a nuisance, in violation of section 34.093. The property manager and tenants will continue to receive citations under this subsection until the court has removed the nuisance determination.

(d) It is a defense to prosecution under subsection (c), for a property manager, that the property manager has been instructed by the property owner not to address the nuisance situation.

Sec. 34.096. Notice to property owner of nuisance determination.

(a) If the court determines that the residence has become a nuisance, and if the property owner was not at the hearing, the chief of police shall give the property owner written notice of this determination.

(b) Written notice shall be provided in the manner described in subsection 34.094(b).

(c) The property owner shall have 10 days from the date of the notice to either arrange a meeting with the chief of police to discuss a nuisance abatement strategy or to send the chief of police a written statement that outlines a plan to abate the nuisance.

(1) The property owner may have a designee respond to the chief of police in the property owner's stead. Before the chief of police will meet with the designee or accept a written statement from the designee, the property owner must provide to the chief of police a statement indicating that

(a) the property owner has given the designee full power and authority to act for the property owner under this division and

(b) the property owner understands that if the designee breaches the agreement between the designee and the chief of police or if the designee takes no action under this division, then the fees in subsection 34.097(c) will be assessed against the property owner and nonpayment of these fees will result in a lien being filed against the property.

Sec. 34.097. Abatement; written agreement; breach of agreement; fees assessed.

(a) If, at the meeting, the property owner and the chief of police come to a written agreement on how to abate the nuisance, no further action will be necessary unless the property owner breaches the agreement.

(b) If the property owner breaches the agreement, the police department shall act as if no agreement had been reached and shall proceed under subsection (c) of this section.

(c) If the property owner does not contact the chief of police within 10 days of notice or if no agreement is reached at the meeting, then upon the next verified complaint, the property owner shall be assessed a fee for the current police response, the two prior responses, and all subsequent responses the police are required to make due to verified noise complaints. Fees will continue to be assessed for subsequent responses until the property owner contacts the chief of police and arranges to meet with him.

(d) If there is another police response to a verified noise complaint after the chief of police receives the written statement that outlines a plan to abate the nuisance, then the property owner must arrange a meeting with the chief of police to discuss a nuisance abatement strategy. Notice will be provided as in section 34.094(b). If the property owner does not arrange a meeting within 10 days, then the police department will assess fees under the procedure described in subsection (c) of this section.

Sec. 34.098. Lien.

If the property owner does not pay the fees assessed under section 34.097 within 30 days, then the finance director will execute a statement of the fees assessed and file the statement as a lien with the county clerk of the county in which the residence is located. The statement must include the name of the property owner if known, and the legal description of the lot.

Sec. 34.099. Injunction.

If the lien is not paid within six months, the city may seek an injunction to prevent the property from being used as a residence.

Sec. 34.100. Removal of nuisance determination.

(a) The property owner may file a petition with the municipal court to have the nuisance determination removed. The property owner shall serve a copy of the petition on the city attorney and the chief of police. The petition must include:

- (1) the address of the residence;
- (2) the date of the order determining the residence to be a nuisance, which must be at least 60 days before the date of the petition; and
- (3) a statement that there were no verified noise complaints at the residence in the 60 days before the petition to have the nuisance determination removed was filed, or that all persons who occupied the residence when the chief of police filed the petition under Section 34.094(a) no longer occupy the residence.

(b) The court shall set the cause for a hearing within thirty days after the court receives the petition to have the nuisance determination removed.

(c) The court may remove the nuisance determination if all provisions of the written agreement have been met, all fees and fines that have been assessed against the property owner and property manager have been paid, and at least one of the following has occurred:

- (1) there were no new verified noise complaints in the 60 days before the petition to have the nuisance determination removed was filed, or
- (2) all people who occupied the residence when the chief of police filed the petition under subsection 34.094(a) no longer occupy the residence.

Sec. 34.101. Suspension of electric service.

(a) If a police officer determines that a party in a residential area constitutes an imminent threat to public safety, the officer may cause electric service at the location of the party to be discontinued.

(1) An imminent threat to public safety includes, without limitation:

- (a) blocking streets in such a way that emergency vehicles cannot access the streets,
- (b) violation of alcohol or drug laws by persons attending the party,
- (c) emergency calls from the area to which the police cannot respond due to the party,
- (d) an ongoing breach of the peace, or
- (e) inability of the police to conduct an investigation due to the nature or circumstances of the party.

(b) Before an officer causes the discontinuation of the electric service to a residence, the officer will give a verbal warning to the occupants of the residence that if they do not comply with the officer's lawful orders, the electric service will be discontinued.

(c) After the verbal warning, if the persons at the residence continue to disregard the officer's lawful orders, the officer may temporarily disconnect the electric service at the residence's breaker. If the occupants then obey the police officer and the officer is able to bring the situation under control, then the officer will reconnect the electric service. If the occupants continue to disregard the officer's lawful orders after this temporary disconnect, then the officer may request that the electric utility department disconnect the electricity at the meter.

(d) If the electricity is disconnected at the meter, then reconnection fees and procedures are identical to those established in the city's electric utility tariffs.

(e) It is unlawful for anyone other than a police officer or an electric utility employee to reconnect electric service after a police officer has caused it to be discontinued.

SECTION 2. The fee authorized in section 34.097 is \$100.00.

SECTION 3. That if any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the remaining provisions of this ordinance shall remain in effect as if the unconstitutional or invalid portion had not been adopted.

SECTION 4. That all ordinances and resolutions or parts of ordinances or resolutions in conflict herewith are hereby repealed.

SECTION 5. That this Ordinance shall be in effect ten (10) days from and after its passage, and it shall be published in a newspaper of general circulation in the area as required by the Charter of the City of San Marcos, Texas.

PASSED AND APPROVED on first reading December 17, 2001.

PASSED AND APPROVED on second reading January 14, 2002.

PASSED, APPROVED AND ADOPTED on third reading March 25, 2002.

David Chiu
Mayor

Attest:

Janis K. Womack
City Clerk

Approved:

Mark B. Taylor
City Attorney