

STATE OF GEORGIA

COUNTY OF GWINNETT

ORDINANCE O-73-08

AN ORDINANCE TO AMEND CHAPTER 26, ARTICLE III OF THE CODE OF ORDINANCES OF THE CITY OF BERKELEY LAKE TO MODIFY SECTION 26-62 TO INCREASE THE MAXIMUM FINE FROM \$500 TO \$1000; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR A REPEAL OF CONFLICTING PROVISIONS; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

ARTICLE III. NOISE CONTROL

Sec. 26-53. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Community event means any event the city has approved prior to its occurrence and that is sponsored or attended by a local organization or group of people.

Construction, street work, street repair, drilling or demolition tools or equipment means machines or mechanically powered items that are typically used on commercial construction projects and involve more than routine repairs or work on residential property for residential occupants.

Domestic power tool means a mechanically powered saw, sander, drill, grinder, lawnmower, weed eater or edger, lawn or garden tool, snow blower, leaf blower or similar device that is used in residential areas for work that is typically done by or for residential occupants.

Noise sensitive unit means any building, structure, or portion thereof that has the doors and windows closed and that is used as a church, day care center, hospital, nursing care center or school, or place of overnight accommodation, including, but not limited to, individual homes, apartments and mobile homes.

OEO means the city ordinance enforcement officer or his designee.

Outdoor activity means an athletic, entertainment or similar activity.

Permit, permitting and permission means to allow, consent to, or expressly assent or agree to the doing of an act.

Person means an individual person, association, trust, partnership, firm or corporation.

Plainly audible means any sound, the content of which can be clearly heard by a

listener of ordinary hearing capabilities.

(Code 2004, § 14-102)

Sec. 26-54. Purpose.

The city council has determined it necessary to control and abate noises which unreasonably annoy, disturb, injure or endanger the comfort, repose, health, peace, safety and welfare of the people of the city, and this article shall be construed to effectuate that purpose.

(Code 2004, § 14-103)

Sec. 26-55. Unreasonable noises prohibited.

No person shall make, assist in making, permit or allow to continue any unreasonable noise in the city. A noise is unreasonable when two or more of the following circumstances exist:

- (1) The noise is made between the hours of 9:00 p.m. and 7:00 a.m.;
- (2) The noise is plainly audible within a noise sensitive unit that is not the source of the noise;
- (3) The noise is amplified by a machine or object;
- (4) The tone of the noise is abnormally high or low according to the perception of a listener with normal hearing capabilities;
- (5) The noise remains constant for at least five minutes; or
- (6) The noise is repeated at least three times during a 30-minute time period.

(Code 2004, § 14-104)

State law references: General definition of a nuisance, O.C.G.A. § 41-1-1; categories of nuisances, O.C.G.A. § 41-1-2.

Sec. 26-56. Specific noises prohibited.

- (a) The following acts are presumed unreasonable noises in violation of this article:
- (1) The use, operation or playing of any radio, television, phonograph, compact disc player, tape player, loudspeaker, musical instrument, or other similar machine or device that is used for the production of noise between the hours of 10:00 p.m. and 7:00 a.m. when the noise is plainly audible within a noise sensitive unit that is not the source of the noise.
 - (2) The loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, or similar objects between the hours of 9:00 p.m. and 7:00 a.m. when the noise is plainly audible within a noise sensitive unit that is not the source of the noise.
 - (3) The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle, except as a danger signal.
 - (4) The use of any automobile, motorcycle or other kind of vehicle in a

manner that creates loud grating, grinding, revving, rattling or other similar noise.

- (5) The use of exhaust brakes, except when used in an emergency to stop or slow a vehicle to avoid a collision.
 - (6) The discharging of exhaust from any steam engine, stationary internal combustion engine, motorboat, motorcycle or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises.
 - (7) The making of, or assisting with the making of, noise in a public park when the noise is plainly audible within a noise sensitive unit that is not the source of the noise.
 - (8) The use of construction, street work, street repair, drilling or demolition tools or equipment during the following hours:
 - a. Monday through Friday before 7:00 a.m. or after 9:00 p.m.;
 - b. Saturdays before 8:00 a.m. or after 7:00 p.m.; and
 - c. Sundays before 10:00 a.m. or after 7:00 p.m.
 - (9) The use of domestic power tools during the hours of 10:00 p.m. and 7:00 a.m.
 - (10) Noise created by animals when it violates the standards adopted in the county animal control ordinance. Enforcement of this subsection shall be the responsibility of the OEO and the county animal control, unless otherwise designated by the council.
- (b) The enumeration of unreasonable noises in subsection (a) of this section shall not limit the city from investigating and declaring other noises unreasonable as provided for in section 26-55.

(Code 2004, § 14-105)

Sec. 26-57. General exceptions.

The following acts are exceptions to the prohibitions in section 26-55:

- (1) Noise emanating from aircraft and aircraft operations, railway locomotives and nonstationary farming equipment.
- (2) Noise created by the normal operation of construction, street work, street repair, drilling or demolition tools or equipment provided the construction, street work, street repair, drilling or demolition work occurs during the following hours:
 - a. Monday through Friday, 7:00 a.m. to 9:00 p.m.;
 - b. Saturday 8:00 a.m. to 7:00 p.m.; or
 - c. Sunday 10:00 a.m. to 7:00 p.m.
- (3) Noise created by the operation of any domestic power tool provided that operation of the domestic power tool occurs during the hours of 7:00 a.m.

and 9:00 p.m.

- (4) Noise created by an outdoor activity or community event conducted on public parks, playgrounds, and public or private school grounds.
- (5) Noise created by an animal that does not violate section 26-56(a)(10).
- (6) Noise that constitutes constitutionally protected speech when the noise occurs during the hours of 7:00 a.m. and 10:00 p.m. and is not so loud that it is plainly audible within a noise sensitive unit that is not the source of the sound.

(Code 2004, § 14-106)

Sec. 26-58. Exception due to emergency situation.

It shall be a defense to violation of section 26-55 that at the time of the violation there existed an emergency which compelled the person to cause the noise or sound in question.

(Code 2004, § 14-107)

Sec. 26-59. Application for variance.

Provisions of this article are subject to a variance in accordance with the following:

- (1) The OEO shall decide whether to approve, approve with conditions, or deny an application for a variance.
- (2) The application for a variance shall be in writing on a form provided by the city and shall include an application fee in the amount determined by council resolution. The applicant shall submit information regarding the date, time and location of the activity or event that will generate the noise for which a variance is being sought, the reasons the variance is being requested and any other information requested by the OEO. The application shall not be received until all the requested information and application fee has been submitted.
- (3) No more than 14 calendar days after the date of the application, the OEO shall make a decision to approve or deny the application. The decision shall be based on the information provided in the application and the results of the OEO's investigation, if any. If no decision shall be made on the application within the 14-day period, the variance shall be deemed to be approved. The variance application shall be approved if the OEO finds that the following standards will be met:
 - a. The benefits of allowing the activity or event that will cause unreasonable noise outweigh the disruption or harm caused by the unreasonable noise;
 - b. The duration and volume of the noise is the minimum amount necessary to achieve the purpose of engaging in the activity or event that will cause the noise; and

- c. The applicant will minimize the noise that is produced between the hours of 10:00 p.m. and 7:00 a.m.
- (4) The OEO shall mail a copy of the decision to the applicant.
- (5) An applicant, or any other individual affected by the proposed variance, may appeal the OEO's decision to the city council. The appeal must be in writing and filed with the city clerk no more than seven calendar days after the date the decision was mailed. Any party filing a written appeal shall:
 - a. Identify himself as the applicant or interested person;
 - b. Include a copy of the decision that is being appealed and the application or written comments that was submitted;
 - c. State with specificity the reasons why the decision is being appealed; and
 - d. Explain why he believes the decision is inconsistent with the standards in subsection (3) of this section.
- (6) Upon receipt of a timely and complete appeal, the city clerk shall place the appeal on the next possible city council meeting agenda and shall mail written notice to Appellant informing them of the date the city council will consider the appeal.
- (7) At the appeal hearing, the city council shall review the application, written comments, and written appeal, and decide whether to affirm, reverse or modify the OEO's decision. The city council's decision shall be reduced to writing and mailing to the appellant.

(Code 2004, § 14-108)

Sec. 26-60. Nonexclusivity.

This article shall not affect the validity or enforceability of any other state law or city or county ordinance, which is or may in the future be in effect and which relates to the activities regulated by this article.

(Code 2004, § 14-109)

Sec. 26-61. Each incident deemed separate violation.

Each incident constituting a violation of section 26-55 or 26-56 shall constitute a separate offense. Upon citation for violation of section 26-55 or 26-56, the failure of the person to abate the noise shall result in the issuance of further citations.

(Code 2004, § 14-110)

Sec. 26-62. Violation; penalty.

Any person who is convicted of a violation of this article shall be fined not more than \$1000.00.

(Code 2004, § 14-111)

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Comment [LGT1]: It would appear that the sections referenced here were numbered incorrectly. It doesn't make sense to me that you would violate a "general exceptions" section, but it does make sense that you would violate a section entitled "unreasonable noises prohibited." I wanted to make that correction here since we're changing the fine anyway. FYI... the sections were referenced this way in the old code as well as in the municode.

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