

Ordinance No. 2008.07
Village of Salado
County of Bell
State of Texas
March 6, 2008

NOISE ORDINANCE

AN ORDINANCE OF THE VILLAGE OF SALADO DECLARING CERTAIN NOISES TO BE A NUISANCE AND ENACTING NOISE REGULATIONS, PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; A POPULAR NAME; PURPOSE; GENERAL PROHIBITIONS; SPECIFIC PROHIBITIONS; NONAPPLICABILITY; REPEALER CLAUSE; A SEVERABILITY CLAUSE; EFFECTIVE DATE; ENFORCEMENT INCLUDING CRIMINAL FINES NOT TO EXCEED \$500 AND CIVIL PENALTIES NOT TO EXCEED \$100 PER OFFENSE AND INJUNCTIVE RELIEF; AND PROPER NOTICE AND OPEN MEETING

WHEREAS, upon conducting a public hearing and reviewing testimony regarding the growing proliferation of certain noises within the Village of Salado (“Village”), the Board of Aldermen of the Village of Salado (“Board of Aldermen”) finds that certain unreasonably loud noises cause material distress, discomfort and injury to person of ordinary sensibilities in the immediate vicinity thereof, and that these noises substantially interfere with the comfortable enjoyment of private homes and businesses by persons or ordinary sensibilities; and

WHEREAS, the Board of Aldermen finds that excessive noise and excessive vibration degrade the historic, rural environment of the Village to a degree which is harmful and detrimental to the health, welfare and safety of its inhabitants, and interferes with the comfortable enjoyment of life, property and recreation and with the conduct and operation of business; and causes nuisances; and

WHEREAS, the Board of Aldermen finds that no person has any right to create excessive noise or excessive vibration; and

WHEREAS, effective control and elimination of excessive noise and excessive vibration is essential to the furtherance of the health and welfare of the Village’s inhabitants and to the conduct of the normal pursuits of life, recreation, commerce and industrial activity; and

WHEREAS, the Board of Aldermen seeks to protect the public welfare and safety of its residents, and to preserve property values within the Village through the reasonable regulation of certain noises; and

WHEREAS, the Board of Aldermen has the general statutory authority, pursuant to Texas Local Government Code Chapter 54, to adopt an ordinance, rule or police regulation that is for the good government, peace, and order of the Village; and

WHEREAS, the Board of Aldermen has the specific statutory authority, pursuant to Texas Local Government Code Chapter 217, to prevent and punish a person engaging in a breach of the peace and to suppress and prevent any noise or disturbance in any public or private place in the Village; and

WHEREAS, the Board of Aldermen finds it to be in the best interest of the public safety, health and general welfare to regulate certain noises within the Village; and

NOW THEREFORE, be it ordained by the Board of Aldermen of the Village of Salado, Texas:

1. INTRODUCTION

A. POPULAR NAME

This Ordinance shall commonly be referred to as Salado's "Noise Ordinance."

B. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the Board of Aldermen of the Village of Salado and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

C. PURPOSE

It is the intent and purpose of this Ordinance to limit, control and eliminate excessive noise and excessive vibration from whatever source.

D. SCOPE

This Ordinance provides regulatory standards throughout the Village's incorporated municipal boundaries (i.e., city limits) but not the extraterritorial jurisdiction (ETJ).

E. DEFINITIONS

Words and phrases used in this Ordinance shall have the meanings set forth in this section. Words and phrases which are not defined in this Ordinance but are defined in other ordinances of the Village of Salado shall be given the meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Ordinance.

(1) **Person:** means an individual, corporation, organization, government agency, business, trust, partnership, association, or any other legal entity.

(2) **Village:** means the Village of Salado, an incorporated municipality located in Bell County, Texas. The term may also refer to employees, agents or other designees of the Board of Aldermen of the Village of Salado.

2. GENERAL PROHIBITIONS

No person within the Village of Salado shall create, generate, emanate, make, continue or cause to be made or continued, any loud, unnecessary or unusual noise that annoys, disturbs, distresses, injures or endangers the comfort, repose, convenience, health, peace or safety of any person of reasonable nervous sensibilities within the Village.

3. SPECIFIC PROHIBITIONS

The following acts are declared to be loud, disturbing and unnecessary noises in violation of this section:

A. Vehicles:

- (1) **Horns, Signaling Devices:** The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any street or public place of the Village, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; the sounding of any such device for an unnecessary and unreasonable period of time; the use of any horn, whistle, or other device operated by engine exhaust. This section does not apply to authorized emergency vehicles, which may use warning sounds.
- (2) **Engine Exhausts:** The discharge into the open air within the Village of the exhaust of any steam engine, gasoline engine, stationary internal combustion engine, or other kind or type of engine, motor boat, or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (3) **Defect in Vehicle or Load:** The use within the Village of any wagon, cart, automobile, truck, motorcycle, or other vehicle, so out of repair or loaded in such manner or with material of such nature as to create loud and unnecessary grating, grinding, rattling or other noises.
- (4) **Loading, Unloading, or Opening Boxes:** The creation within the Village of loud and excessive noise in connection with loading or unloading of any vehicle, or the opening or destruction of bales, boxes, crates, containers, or the like, without exercising reasonable care to limit such noise and to confine the same.

B. Construction, Repairing of Buildings: The creation (including excavating), demolition, alteration or repair of any building within the Village, other than between the hours of seven o'clock (7:00) a.m. and ten o'clock (10:00) p.m. on weekdays, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the Village Mayor, or the Mayor's designee, which permit may be granted for a period up to three (3) days while the emergency continues and which permit may be renewed for periods of three days while the emergency continues.

C. Drums: The use within the Village of any drum or other instrument or device for the purpose of attracting attention, by the creation of noise, to any place of business or entertainment or place of public assembly.

- D. (1) Pile Drivers, Hammers:** The operation within the Village between the hours of ten o'clock (10:00) p.m. and seven o'clock (7:00) a.m. of any pile driver, power shovel, pneumatic hammer, derrick or noise, or other appliance, the use of which is attended by loud or unusual noises.
- (2) Blowers:** The operation within the Village of any noise-creating blower or power fan, the operation of which causes loud disturbing noise, between the hours of ten o'clock (10:00) p.m. and seven o'clock (7:00) a.m. unless such blower or fan is muffled to deaden such noise.
- E. Loudspeakers, Amplifiers, Paging Systems:**
- (1) Sound on Streets:** The playing, using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets of the Village.
- (2) Restrictions Upon Hours of Permitted Use:** No machine or device specified in paragraph 1 above shall be operated between the hours of ten o'clock (10:00) p.m. and seven o'clock (7:00) a.m. from Sunday evening through Friday morning, and between eleven o'clock (11:00) p.m. and seven o'clock (7:00) a.m. from Friday evening through Sunday morning and on those evenings preceding national holidays and legal school holidays enumerated in statutes in such a manner as to be plainly audible at a distance of fifty feet (50') from the location of such set, instrument or device.
- F. Radios, Phonographs:** The playing, using, operating or permitting to be played, used or operated, any radio receiving set, musical instrument, phonograph, tape player, television receiving set or other machine or device for the producing or reproducing of sound between the hours of ten o'clock (10:00) p.m. and seven o'clock (7:00) a.m. from Sunday evening through Friday morning, and between eleven o'clock (11:00) p.m. and seven o'clock (7:00) a.m. from Friday evening through Sunday morning and on those evenings preceding holidays as established by Village ordinance, loud enough to be clearly heard fifty feet (50') from any the boundary of the property on which the sound is produced or reproduced.
- G. Schools, Courts, and Churches:** The creation within the Village of any excessive noise in the vicinity of any school, institution of learning, court, government administration facility, or church, while the same is in use, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys occupants of the institution, provided conspicuous signs are displayed at or near such buildings indicating that the same is a school, court, government administration facility, or church.
- H. Yelling, Shouting:** Yelling, shouting, hooting, whistling, or singing on the public streets of the Village, between the hours of ten o'clock (10:00) p.m. and seven o'clock (7:00) a.m. or at any time or place so as to annoy or disturb the peace, quiet, comfort or repose of persons in any office, residential dwelling, hotel or other type of residence or of persons in the vicinity.

- I. Animals, Birds:** The keeping of any animal or bird shut up or tied up in any yard, enclosure, stable, or other place that, by frequently repeated barking, howling, crying, or singing, causes frequent or long continued noise.

4. NONAPPLICABILITY

A. EXCEPTIONS

The provisions of this Ordinance shall not apply to:

- (1) Sound generated by an emergency vehicle or for the purposes of alerting persons to an emergency;
- (2) Sound produced by duly authorized officers, agents or employees of a government agency in the performance of a governmental function;
- (3) Sound generated at or by a parade route during a lawful and permitted parade, a scheduled civic or sporting event, an outdoor festival or celebration, or a musical or theatrical production co-sponsored or authorized by the Village.

B. VARIANCES

The Mayor may grant variances from the technical application of this Ordinance upon receipt of a twenty-five dollar (\$25.00) administrative fee and upon finding that:

- (1) The activity, operation, noise or vibration will be of temporary duration and cannot reasonably be done in a manner that will comply with this Ordinance;
- (2) No reasonable alternative is available to the applicant;
- (3) The variance is not contrary to the public interest;
- (4) Due to special circumstances, a literal enforcement of the Ordinance would result in undue hardship (which does not necessarily include financial hardship); and
- (5) The spirit of the Ordinance will be observed and substantial justice done.

5. NUISANCE

Any unreasonably loud, disturbing noise which causes material distress, discomfort or injury to persons of ordinary sensibilities in the immediate vicinity thereof is hereby declared to be a nuisance and is hereby prohibited. Any noise of such character, intensity and continued duration which substantially interferes with the comfortable enjoyment of private homes, government administration facilities, or businesses by persons of ordinary sensibilities, is hereby declared to be a nuisance and is hereby prohibited.

6. RELATION TO OTHER ORDINANCES

This Ordinance is enacted in addition to other regulations adopted by the Village. When possible, ordinances addressing the same topic shall be read together in harmony. When Village regulations conflict, the most stringent shall govern unless a variance is granted.

7. REPEALER

This Ordinance, upon its enactment and effective date, shall repeal all conflicting provisions that may be contained in other Village ordinances or regulations.

8. SEVERABILITY

It is hereby declared to be the intention of the Board of Aldermen that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be 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 or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

9. ENFORCEMENT

A. NUISANCE

The Village shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

B. CRIMINAL PROSECUTION

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00) per offense. Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

C. CIVIL REMEDIES

Nothing in this Ordinance shall be construed as a waiver of the Village's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

1. injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
2. a civil penalty up to one hundred dollars (\$100.00) a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and
3. other available relief.

10. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED on this the 6 day of March, 2008, by a vote of _____ ayes, _____ nays, and _____ abstentions of the Board of Aldermen.

THE VILLAGE OF SALADO, TEXAS

Rick Ashe, Mayor

ATTEST:

Dianna Zulauf, Village Secretary

APPROVED AS TO FORM:

Alan J. Bojorquez, Village Attorney