

ORDINANCE NO. 21 - 97

AN ORDINANCE OF THE VILLAGE OF PLEAK, TEXAS DECLARING CERTAIN NOISE TO BE A NUISANCE AND PROHIBITING CERTAIN NOISE WITHIN THE VILLAGE OF PLEAK; ESTABLISHING PENALTIES NOT TO EXCEED \$500.00 AND INJUNCTIVE REMEDY; REPEALING ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Pleak is a General Law City and acting under the Texas Local Government Code; and

WHEREAS the Village Board of Aldermen has determined that it is reasonable and appropriate to protect the residents of the Village of Pleak from any nuisance impact created by noise that is unreasonably loud, disturbing or unnecessary and that prevents other property owners and residents from enjoying the reasonable use of their property; and

WHEREAS, in order to implement this intent, it is necessary to control the level of noise in a manner which protects the peace of residents; promotes the value and enjoyment of property and preserves the quality of the environment yet provides reasonable notice and guidance to residents of what type of activity is prohibited.

NOW THEREFORE, BE IT ORDAINED BY THE VILLAGE OF PLEAK BOARD OF ALDERMEN, TEXAS:

Section 1. Definitions.

dB(A) means the abbreviation of the sound level in decibels determined by the A-weighting network of a sound-level meter or by calculation from octave band or one-third octave band.

Decibel (dB) means a unit of measure on a logarithmic scale, or the ratio of a particular sound pressure squared to a standard reference pressure squared. For the purpose of this article, 20 micro-pascals shall be the standard reference pressure.

Motor vehicle means any and all self-propelled vehicles as defined by the Texas Traffic Code, including all motor vehicles subject to identification under such code and all motor vehicles exempted under such code.

Noise means the intensity, frequency, duration and character of sound, including sound and vibration of subaudible frequencies.

Noise level means the maximum continuous sound level or repetitive peak level produced by a source or group of sources.

Property line shall mean the line along the ground surface, and its vertical extension, which separates the real property owned, leased or occupied by one (1)

person from that owned, leased or occupied by another person and the imaginary line which represents the legal limits of property of any person who owns, leases or otherwise occupies an apartment, condominium, hotel or motel room, office or any other type of occupancy.

Residential property shall mean any real property developed and used for human habitation and which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, unless such premises are actually occupied and used primarily for purposes other than human habitation.

Sound amplifier means any radio receiving set, microphone, musical instrument, phonograph, speaker(s) or other machine or device for the producing or reproducing of sound.

Sound level means in decibels the weighted sound—pressure level measured by the use of a sound-level meter satisfying the requirements of ANSI SI.4, 1971, Specifications for Sound-Level Meters.

Section 2. Nuisance.

Any unreasonable 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.

Section 3. Prohibited noise.

The following acts within the Village limits are declared to be a noise nuisance and are prohibited during stated hours:

a. Noise that results from a gathering of people, which term shall mean any sound that because of its volume level, character or duration, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities during the following hours: 9:00 p.m. to 7:00 a.m. Sunday through Thursday; 11:00 p.m. to 7:00 a.m. Friday through Saturday.

b. The playing, using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, singing, television, operation of any such sound amplifier or audio device in such a manner as to be plainly audible or to cause vibrations to be felt at a distance of thirty (30) feet or more beyond the property lines on which the sound is being emitted, or exceeds the applicable dB(A) level listed below, shall be presumed to be violative of this section and are prohibited during the following hours: 9:00 p.m. to 7:00 a.m. Sunday through Thursday; 11:00 p.m. to 7:00 a.m. Friday through Saturday.

c. Operating, 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 to produce, reproduce, intensify or amplify any sound in any building or on any premises of the Village, or in or on any vehicle in the Village, for any purpose whereby the sound therefrom is cast directly upon the public streets or places, or which is so placed or operated that the sound coming therefrom can be heard on the streets or on neighboring premises during the following hours: 9:00 p.m. to 7:00 a.m. Sunday through Thursday; 11:00 p.m. to 7:00 a.m. Friday through Saturday.

d. The operation of any automobile, truck, motorcycle, or vehicle so out of repair, so loaded, or in such manner as to create loud or unnecessary grating, grinding, jarring, or other loud noise or vibration during anytime of the day or night.

Section 4. Maximum allowable dB(A) levels

a. The maximum allowable dB(A) level for Residential property is fifty-eight (58) dBA and for Nonresidential property is sixty-eight (68) dB(A)

b. The dB(A) levels apply to the property where the sound is being received. Any sound that when measured at the property where the sound is being received exceeds the dB(A) levels set forth in this section is a violation of this article. Evidence that an activity or sound source produced a sound that exceeds the referenced dB(A) levels, or caused vibrations to be felt as specified in this section, shall be prima facie evidence of a noise nuisance which unreasonably disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the Village in violation of this article, but shall not be deemed to be exclusive.

Section 5. Defenses.

The following defenses shall apply to any offense established in this article:

1. The emission of any sound was for the purpose of alerting persons to the existence of an emergency, danger or attempted crime.
2. The sound was produced by an authorized emergency vehicle.
3. The sound was produced by emergency work necessary to restore public utilities, or to restore property to a safe condition, or to protect persons or property from imminent danger, following a fire, accident or natural disaster.
4. The sound was produced by any governmental body in the performance of a governmental function.
5. The sound was generated:

At a scheduled stadium event;

By a parade and spectators and participants on the parade route during a permitted parade;

By a pyrotechnic display that was inspected and approved by the fire marshal; or

By spectators and participants of any outdoor event, fun run, race, festival, fiesta, or concert which was sponsored, cosponsored, or permitted by the Village, or

By any other lawful activity which constitutes protected expression pursuant to the First Amendment of the United States Constitution.

Section 6. Penalty provision.

1. The Village is hereby authorized to seek court action to abate any noise nuisance in lieu of or in addition to any other enforcement remedies that may be available.
2. Any person who violates any provision of this article shall, upon conviction, be punished, by a fine not to exceed \$500.00.
3. Each day any violation of this ordinance shall continue shall constitute a separate offense.
4. In addition to criminal fines, the Village has the right to seek all remedies allowed by law including injunctive relief.

Section 7. Severability clause.

If any provision of this ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are hereby declared to be severable.

Section 8. Conflict.

All ordinances or parts inconsistent or in conflict herewith are to the extent of such inconsistency or conflict, hereby repealed.

Section 9. Adoption of ordinance.

This ordinance and the rules and regulations established and adopted shall become effective upon its approval and passage.

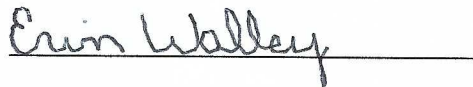
PASSED AND ADOPTED by an affirmative vote of all members of the Board of Aldermen for the Village of Pleak this 20th day of October 2021.

APPROVED:

A handwritten signature in cursive script, reading "Larry Bittner", written over a horizontal line.

Larry Bittner, Mayor

ATTEST:

A handwritten signature in cursive script, reading "Erin Walley", written over a horizontal line.

Erin Walley, Village Secretary