

AN ORDINANCE 2007 - 04 - 05 - 0371

AMENDING CHAPTER 21 OF THE CITY CODE, ARTICLE III, DIVISION 1 TO REFLECT ADMINISTRATIVE CHANGES; CREATE A NEW DIVISION 3 ENTITLED PARTY, GATHERING, EVENT; PROVIDE FOR RECOVERY OF COSTS INCURRED FROM REPEAT RESPONSE FOR NOISE COMPLAINTS AT SAME LOCATION; PROVIDE FOR EXCEPTIONS; PROVIDE FOR HEARING PROCEDURE AFTER RECEIPT OF COST ASSESSMENT; AND PROVIDE FOR PUBLICATION.

\* \* \* \* \*

WHEREAS, over the course of the past year, numerous citizens have expressed concerns with the lack of enforcement ability to regulate repeat noise violations throughout the City and the City Council finds that excessive noise is a public nuisance; and,

WHEREAS, the proposed amendments and additions to the existing noise ordinance include provisions to address the issue of repeat noise complaint responses to the same location and provides authority to the City to recover its administrative costs for each officer's time in responding to subsequent noise complaints within 60 days of the initial complaint; and

WHEREAS, this fee will not replace a citable offense and can be assessed in addition to any punishable fine assessed; **NOW THEREFORE,**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** Article III, Division 1, of Chapter 21 of the City Code of San Antonio, Texas is hereby amended to reflect administrative changes; additions are signified by underline, deletions are signified by ~~strikeout~~ text as follows:

**Sec. 21-51. Definitions and standards.**

[As used in this division the following words and terms shall have the meanings respectively ascribed:]

*A-weighted sound level* shall means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

*Daytime/evening* shall mean the hours between six o'clock a.m. and ten o'clock p.m., Sunday through Thursday and six o'clock a.m. and eleven o'clock p.m. Friday and Saturday.

*Director* shall mean Director of Housing and Neighborhood Services Department.

*Impulsive sound* shall means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.

*Leq* shall mean an average measure of continuous noise that has the equivalent acoustic energy of the fluctuating signal over the same time period. The time period of monitoring will be

continuous over any two (2) hours and will use the A-weighting network reported in decibel units.

*Nighttime* shall mean the hours between ten o'clock p.m. and six o'clock a.m., Sunday through Thursday and eleven o'clock p.m. and six o'clock a.m. Friday and Saturday.

*Noise nuisance* shall mean any loud, irritating, vexing or disturbing sound originating from a nearby property under separate ownership which causes injury, discomfort, or distress of a person of reasonable nervous sensibilities, or any sound that exceeds the maximum permitted sound levels specified in subsections 21-52(a) (6)(b), (9)--(12), 21-60(b).

*Sound level* shall mean the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network such as A, B or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1.4-1971). If the frequency weighting employed is not indicated, the A-weighting shall apply.

*Sound level meter* shall mean an instrument which includes a microphone, amplifier, RMS detector, integrator or time averages, output meter, and weighting network used to measure sound pressure levels.

\* \* \* \* \*

#### **Sec. 21-57. Enforcement.**

(a) *Administrative stop order.*

(1) The director ~~of code compliance~~, his/her designee, or duly authorized noise abatement officers may issue an order to any person having possession or control over noise generating property to immediately halt any sound which exposes any person, except those excluded in subsection (2) below, to continuous or impulsive noise levels in excess of those shown in Tables 1 ~~through 4~~. Within five (5) days following issuance of such an order, the director ~~of code compliance~~ or his/her duly authorized representative may apply to the appropriate court for an injunction to replace the administrative stop order.

(2) No stop order shall be issued if the only persons exposed to sound levels in excess of those listed in Tables 1 ~~through 4~~ are exposed as a result of:

a. Trespass; or

b. Invitation upon private property by the person causing or permitting the sound.

(b) *Seizure of noise producing property.* The ~~code compliance~~ director or his/her duly authorized agents are hereby authorized to apply to any magistrate for an administrative search warrant for the purpose of entering private property to investigate and identify noise nuisance producing devices, machines, instruments, or objects. Such identified property may be seized to summarily abate the noise nuisance if:

(1) A person who is cited for the subject noise violation has been convicted of a violation of any provision of this article within the preceding twelve (12) months, or has been declared to be an "habitual noise nuisance violator" within the preceding twenty-four (24) months; or

(2) The location of the noise nuisance has been declared an habitual noise nuisance source by the ~~code compliance~~ director, after appropriate notice to the real property owner or person in possession of the subject noise-source real property, of an administrative hearing to be held for the purpose of hearing evidence and determining whether the subject location is in fact an "habitual noise nuisance source." Upon finding a location to be an "habitual noise nuisance source," the noise producing property shall be immediately seized at the time of any subsequent

violations whether or not there is a previous noise nuisance conviction associated with the location.

Such seizures shall be for the purpose of assuring continued cessation of the noise nuisance after the departure of the noise abatement peace officers by securing the instrumentality of the noise nuisance temporarily. The noise producing device, machine, instrument, or object shall be returned to the owner or person proving the right of possession, or to his/her authorized agent, not sooner than twenty-four (24) hours after seizure. Any disputed ownership or right of possession shall be resolved at a property disposition hearing before a magistrate of the city. Seizure of noise nuisance producing property shall be accomplished in addition to and not in lieu of municipal court prosecution and/or a civil suit for injunctive relief and civil penalties.

(c) *Impoundment of noise nuisance animals.* Upon the determination by the ~~code compliance~~ director that any animal(s) at an identified address or location within the city has produced noise on two (2) occasions of a nature and intensity that violates the standards established by this ~~article~~ division and/or Chapter 5, Article VI, section 5-201, animal nuisances, he/she may notify the resident or occupant that the animal(s) are producing a noise nuisance, and that an administrative hearing shall be held for the purpose of determining if the animal(s) constitute a continuing noise nuisance which must be summarily abated by seizure and impoundment until the owner or person from whom the animal was seized provides written consent of another person to provide shelter and care for the animal(s) in a fenced property not less than two hundred (200) feet from any neighboring residential structure or until the tenth day of impoundment. Said animals shall be destroyed if not reclaimed on or before the ten (10) days of impoundment.

(d) *Declaration of habitual noise nuisance producer.* After producing noise measured at decibels in excess of the maximum allow by this article on three (3) separate days within a twelve-month period, the noise producer shall be given notice of an administrative hearing before a municipal court magistrate for the purpose of introducing evidence so that the magistrate can make a determination of whether or not the cited noise producer is an "habitual noise nuisance producer," and if the magistrate so finds, a written declaration of said finding shall be signed by the magistrate and kept on file by the abatement officer for a period of one (1) year.

(e) *Declaration of habitual noise nuisance location.* After the production of noise in excess of that allowed by this article by anyone at the same address or property location on three (3) separate days within a 12-month period, the owner or lessee or person in possession shall be given notice of an administrative hearing before a municipal court magistrate for the purpose of introducing evidence so that the magistrate can make a determination of whether or not the location is an "habitual noise nuisance source," and if the magistrate so finds, a written declaration of said finding shall be signed by the magistrate and shall be kept on file by the abatement officer for a period of one (1) year.

(f) *Seizure.* If the magistrate determines that the noise producer is an "habitual noise nuisance producer" or that the location is an "habitual noise nuisance source," the noise producing instrument, equipment, or other noise producing item used by the habitual noise nuisance producer may be immediately seized at the time of a subsequent decibel measurement in excess of that allowed by this article. At the time of such seizure, a written notice of the right to an immediate administrative hearing before a municipal court magistrate shall be issued to the habitual noise producer or owner or person in possession of the habitual noise nuisance source. The hearing shall be for the purpose of determining if a noise nuisance actually occurred on

which the abatement officer based his seizure, and to voice any complaints about the manner of the seizure. If the noise produced is determined by the magistrate not to constitute a noise nuisance, the subject property shall be immediately delivered to the person from whom it was seized.

\* \* \* \* \*

**Sec. 21-59. Identification of violator.**

The persons responsible for violations of this ~~article~~ division are identified as follows:

\* \* \* \* \*

**Sec. 21-61. Appointment of abatement officers.**

The city manager, ~~or~~ his/her designee, or the director ~~of code compliance~~ is authorized to appoint state licensed peace officers as "abatement officers" for nuisance abatement duties, and said officers shall report to the director ~~of code compliance~~ or his/her designee as members of the staff of said department. Each peace officer appointment shall terminate with the termination of the nuisance abatement duty for which the peace officer was hired.

\* \* \* \* \*

**Sec. 21-67. Display of signs and placards.**

It shall be the duty of the ~~code compliance~~ director to place and maintain, or cause to be placed and maintained, on lampposts or other such post or object in some conspicuous place on every street, avenue, and alley in the vicinity of every school or other institution of learning, public and private, and every sanitarium, hospital or other like institution, public and private, signs or placards which shall indicate that the same is a "quiet zone." The signs or placards shall be placed on such streets, avenues and alleys at a distance of not less than two hundred fifty (250) feet in every direction from the real property upon which is situated, any school or other institution of learning, or any hospital, sanitarium or other like institution for the treatment of sick persons. The signs or placards shall read in a manner similar to, but not restricted to the following: "School--Quiet Zone," or "Hospital--Quiet Zone." Where proper and lawful, the signs or placards designating a quiet zone may also designate the lawful speed limit in such school, or other institution of learning, zone or area in a manner similar to, but not restricted to, the following: "School--Quiet Zone--Speed Limit M.P.H."

**SECTION 2.** Chapter 21 of the City Code of San Antonio, Texas is hereby amended by adding language as a new Division 3 to Article III entitled "PARTY, GATHERING, EVENT", consisting of the new sections 21-80 to 21-84, as follows:

**DIVISION 3. PARTY, GATHERING, EVENT**

**Sec. 21-80. Definitions.**

*Party, gathering or event* shall mean a group of five or more persons who have assembled or are assembling in a manner so as to create a substantial disturbance of the quiet enjoyment of private

or public property. This includes, but is not limited to, excessive noise or traffic, fights, and/or disturbances of the peace.

*Person responsible for the party, gathering or event* shall mean:

(a) any adult person in actual or lawful control or possession of the premises; or,

(b) any adult person who organized the party, gathering or event; or,

(c) the parent or guardian having custody or control of any minor responsible for the party, gathering or event regardless of whether the parent or guardian was present at the time of the party, gathering or event.

*Reasonable costs* may include:

(a) the salary of the each responding officers, at the salary then in effect for each classification of each individual officer, for the amount of time actually spent at the location in responding to the party, gathering, or event; and

(b) the actual cost of any medical treatment to injured officers; and

(c) the cost of repairing any damaged City equipment or property; and

(d) a \$150 administrative fee.

*Officer* shall mean a police, peace, or abatement officer.

**Sec. 21-81. Persons responsible for party liable for city costs.**

(a) Should an officer respond to a party, gathering or large event and while at the location determines that there is a substantial disturbance of the quiet enjoyment of private or public property, any person responsible for the party, gathering or event shall be liable for the reasonable costs of any second or subsequent response by any police officer to that same incident or for a response to the same location for another party, gathering or event within sixty days.

(b) If two or more persons are responsible for the party, gathering or event such persons shall be jointly and severally liable for the reasonable costs of a second or subsequent response.

(c) The liability imposed by this section may be in addition to any civil or criminal penalties or fines.

**Sec. 21-82. Notice of Liability.**

(a) Upon determining that the party, gathering or event is a substantial disturbance of the quiet enjoyment of private or public property, the responding officer shall notify any person responsible for the party, gathering or event that a second response the same day or subsequent response within sixty days from the date of the current party, gathering or event will result in liability for the reasonable costs of the second or subsequent response.

(b) The City shall notify any person responsible for the party, gathering or event of the reasonable costs within sixty (60) days of each second or subsequent response. The reasonable costs for multiple subsequent responses may be included in one statement. The notice shall be delivered to the address the person responsible provides to the responding officer.

**Sec. 21-83. Exceptions and limitations.**

(a) The costs of a second or subsequent response shall be waived if any person responsible for the party, gathering or event initiated the request for a police response and assisted the officers in dispersing persons at the party, gathering or event.

(b) The costs assessed for each second or subsequent response shall not exceed \$1,000 (one thousand dollars) per response.

**Sec. 21-84. Hearing Procedures**

(a) A person liable for the costs of a response may, within ten (10) days of receipt of notice of the costs imposed, request a hearing with an Administrative Hearing Officer duly appointed by the City Manager or his/her designee.

(b) Failure of the person liable for the costs to timely request a hearing or failure to appear at a scheduled hearing shall constitute a waiver of the right to a hearing or to challenge the validity or amount of the costs imposed and shall be an admission of liability.

(c) A hearing shall be scheduled as soon as practicable but within thirty (30) days of the receipt of the request for hearing. The Hearing Officer shall have authority to administer oaths and to issue orders compelling the attendance of witnesses and the production of documents, such orders to be enforced by a municipal court.

(d) The hearing shall be conducted to determine whether there is a sufficient factual and legal basis to impose the costs of the police, peace, or abatement officer response and the reasonableness of the amount. All parties to the hearing shall have the right to present evidence. The record of witness testimony may be preserved for appellate review by the use of an audio tape recording or a videotape recording.

(e) The Hearing Officer shall issue a written order stating whether or not the person is liable for the costs, and the amount of the reasonable costs. The order shall be filed with the municipal court director.

(f) Costs imposed under this section are due and payable upon the expiration of the period to request a hearing or upon notice of the Hearing Officer's decision if a hearing is requested. Costs shall accrue interest at a rate of 10% per annum, or as allowed by law, from the date of assessment until paid in full.

(g) A person found liable for the costs of a second or subsequent response may appeal the decision to the municipal court by filing an appeal petition with the municipal court clerk not

later than thirty (30) days after the order is filed. The appeal hearing shall be scheduled to occur within thirty (30) days of the filing of the appeal petition. The appeal hearing before a municipal court judge shall be an administrative proceeding for the purpose of affirming or reversing the order issued by the Hearing Officer based upon the evidence presented at the hearing. The decision of the municipal court judge shall be final and shall not be appealable.

(h) Neither a notice of intent to appeal nor the filing of an appeal petition shall stay the enforcement and collection of the Hearing Officer's decision unless the service of the notice of appeal is preceded by the posting of a bond with the municipal court clerk in an amount set by a municipal court judge.

**SECTION 3.** All other provisions of Chapter 21 of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this ordinance.

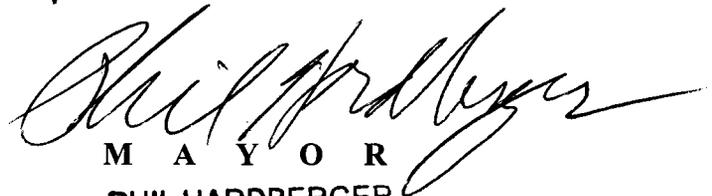
**SECTION 4.** Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

**SECTION 5.** The City Clerk is directed to promptly publish public notice of this ordinance in accordance with Section 17 of the City Charter of San Antonio, Texas.

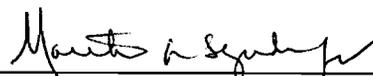
**SECTION 6.** The publishers of the City Code of San Antonio, Texas are authorized to amend said code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

**SECTION 7.** This ordinance shall be effective on \_\_\_\_\_, 2007 but no sooner than the \_\_\_\_ day after publication.

**PASSED AND APPROVED** this 5 day of April, 2007

  
M A Y O R  
PHIL HARDBERGER

**ATTEST:**   
\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**   
\_\_\_\_\_  
City Attorney

# Agenda Voting Results

**Name:** 18.

**Date:** 04/05/07

**Time:** 03:56:05 PM

**Vote Type:** Multiple selection

**Description:** 18. An Ordinance amending Chapter 21, Article III of the City Code to create a new Division, entitled "Party, Gathering, Event" which assesses a fee for the City's costs of repeated responses to the same location for noise violations within a 60 day period. [Presented by David D. Garza, Director, Housing and Neighborhood Services; T.C. Broadnax, Assistant City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3	Not present			
RICHARD PEREZ	DISTRICT 4	Not present			
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR	Not present			

Affidavit of Publisher

**PUBLIC NOTICE**

**AN ORDINANCE  
2007-04-05-0371**

AMENDING CHAPTER 21 OF THE CITY CODE, ARTICLE III, DIVISION 1 TO REFLECT ADMINISTRATIVE CHANGES; CREATE A NEW DIVISION 3 ENTITLED PARTY, GATHERING, EVENT; PROVIDE FOR RECOVERY OF COSTS INCURRED FROM REPEAT RESPONSE FOR NOISE COMPLAINTS AT SAME LOCATION; PROVIDE FOR EXCEPTIONS; PROVIDE FOR HEARING PROCEDURE AFTER RECEIPT OF COST ASSESSMENT; AND PROVIDE FOR PUBLICATION.

STATE OF TEXAS  
COUNTY OF BEXAR  
S.A. - CITY CLERK

Before me, the undersigned authority, on this day personally appeared Helen I. L. by me duly sworn, says on oath that she is Publisher of the Commercial Recorder, general circulation in the City of San Antonio, in the State and County aforesaid, and Ordinance 2007-04-05-0371 here to attached has been published in every issue newspaper on the following days, to wit:

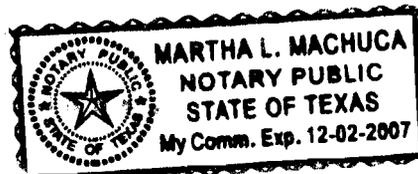
PASSED AND APPROVED  
this 5th day of April, 2007.  
/S/ PHIL HARDBERGER  
MAYOR  
ATTEST: LETICIA VACEK  
CITY CLERK  
4/16

04/16/2007.

*Helen I. Lutz*

Sworn to and subscribed before me this 16th day of of April, 2007.

*Martha L. Machuca*



MEETING OF THE CITY COUNCIL

~~Track Ordinance~~

ALAMODOME
ARTS & CULTURAL AFFAIRS
ASSET MANAGEMENT
AVIATION
BUDGET & PERFORMANCE ASSESSMENT
BUILDING INSPECTIONS
HOUSE NUMBERING
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
RISK MANAGEMENT
CITY MANAGER
SPECIAL PROJECTS
CITY PUBLIC SERVICE - GENERAL MANAGER
CITY PUBLIC SERVICE - MAPS AND RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
COMMUNITY RELATIONS
PUBLIC INFORMATION
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
ECONOMIC DEVELOPMENT
FINANCE - DIRECTOR
FINANCE - ASSESSOR
FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERGOVERNMENTAL RELATIONS
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
PARKS AND RECREATION
MARKET SQUARE
YOUTH INITIATIVES
PLANNING DEPARTMENT
DISABILITY ACCESS OFFICE
LAND DEVELOPMENT SERVICES
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
ENVIRONMENTAL SERVICES
PARKING DIVISION
REAL ESTATE DIVISION
SOLID WASTE
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)

AGENDA ITEM NUMBER: 18

DATE: APR 05 2007

MOTION: Stores / City / Gutierrez

ORDINANCE NUMBER 2007-04-05-0371

RESOLUTION NUMBER: \_\_\_\_\_

ZONING CASE NUMBER: \_\_\_\_\_

TRAVEL AUTHORIZATION: \_\_\_\_\_

	ROUL	AVE	NAY
ROGERE FLORES District 1			
SHEILA D. BUCHER District 2			
ROLAND GUTIERREZ District 3			
RICHARD PEREZ District 4	<i>absent</i>		
PATL BADER District 5			
DELICIA HERNANDEZ District 6			
ELENA GUZMÁN District 7			
ART GALE District 8			
KEVIN A. WOLFE District 9			
CHRISTOPHER "CHIP" HAAS District 10			
PHIL H. ... Mayor			

*Hasler asked staff to explain said item for public consumption.*

VIA

**CONSENT AGENDA**