

ORDINANCE

AN ORDINANCE OF THE CITY OF CUMMING, GEORGIA TO CONTROL NOISE POLLUTION; IDENTIFYING PROHIBITED NOISES; IDENTIFYING EXCEPTIONS; ESTABLISHING THE STANDARD FOR MEASUREMENT AND OTHER STANDARDS; ESTABLISHING AN EXEMPTION FOR CERTAIN SITUATIONS AND USES; SETTING A PENALTY FOR VIOLATION; AND FOR OTHER PURPOSES

WHEREAS, the City has an interest in protecting, preserving, and promoting the health, safety and welfare of the citizens of the City of Cumming through the control of noise;

WHEREAS, Section 43 of the Charter of the City of Cumming provides that the City shall have the authority to regulate and/or abate nuisances;

WHEREAS, Section 25 of the Charter of the City of Cumming states that it is the duty of the chief of police and the City of Cumming Police Department to preserve the public peace, good order, and tranquility of the City and its inhabitants,

WHEREAS the City desires to prohibit disruptive noise without limiting free speech or the constitutional rights of its residents or those working in or visiting in the City of Cumming;

WHEREAS the City has specifically drafted this ordinance to be the least restrictive means of controlling disruptive noise within the City limits;

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF CUMMING as follows:

SECTION ONE. *Enactment of a new Section 16-34: Noise Control.*

Section 16-34 of the Code of the City of Cumming is hereby enacted, which shall read as follows:

Sec. 16-34. - Noise control.

- (a) *Purpose.* This section is enacted to protect, preserve and promote the health, safety and welfare of the citizens of the City of Cumming (the "City") through the control of noise. It is the intent of this section to establish standards that will reduce excessive community noises, which are harmful and otherwise detrimental to individuals and to the community in the enjoyment of life and property and in the conduct of business.
- (b) *Sound measurement standards for law enforcement personnel.* For the purposes of this Section 16-34, "plainly audible" shall mean any sound emanating from the specific sound-producing sources set forth below which can be heard from the distances set forth below, using the following sound measurement standards: Measurement shall be by the auditory senses of a person standing at a distance no less than the required minimum distance from the source of the sound. For music and other noise, words and phrases need not be discernable. For music and other noise, bass reverberations are included.
- (c) *Prohibited conduct.*

(1) *Restrictions of 300 feet for 7:00 a.m. through 11:00 p.m. Sunday through Thursday and 7:00 a.m. through 12:00 midnight on Friday and Saturday.*

- (a) *Mechanical sound-making devices.* It is unlawful for any person or persons to play, use, operate, or permit to be played, used, or operated any radio receiving device, television, stereo, musical instrument, phonograph sound amplifier or other machines or devices for the producing, reproducing or amplifying of sound and/or noise at such a volume and in such a manner so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 300 feet or more from the building, structure or vehicle, or in the case of real property, beyond the property limits, in which it is located, whichever is farthest, between the hours of 7:00 a.m. and 11:00 p.m. Sunday through Thursday and between the hours of 7:00 a.m. and 12:00 midnight on Friday and Saturday.
- (b) *Human-produced sounds.* It is unlawful for any person or persons to yell, shout, hoot, whistle, or sing on the public streets or sidewalks or on private property so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 300 feet or more from the place, building, structure, or in the case of real property, beyond the property limits, in which the person is located, whichever is farthest, between the hours of 7:00 a.m. and 11:00 p.m. Sunday through Thursday and between the hours of 7:00 a.m. and 12:00 midnight on Friday and Saturday.
- (c) *Commercial advertising.* It is unlawful for any person or persons to use, operate, or permit to be used or operated any radio receiving device, musical instrument, phonograph, loud speaker, sound amplifier or other machine or device for the production or reproduction of sound which is cast upon the public streets or other public property for the purpose of commercial advertising or which serves to attract the attention of the public to any building, structure or vehicle in such a manner so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 300 feet or more from the source of the sound cast upon the public streets or other public property or from the building, structure, or in the case of real property, beyond the property limits, in which it is located, whichever is farthest, between the hours of 7:00 a.m. and 11:00 p.m. Sunday through Thursday and between the hours of 7:00 a.m. and 12 midnight on Friday and Saturday.
- (d) *Party noise.* It is unlawful for any person or persons in charge of a party or other social event that occurs on any private property to allow that party or social event to produce noise in such a manner that such noise is plainly audible at a distance of 300 feet or more from the building or structure from which the noise is emanating or in the case of real property, beyond the property limits, on which the party or social event is located, whichever is farthest, between the hours of 7:00 a.m. and 11:00 p.m. Sunday through Thursday and between the hours of 7:00 a.m. and 12 midnight on Friday and Saturday. For the purposes of this

subsection, a "person in charge of a party or other social event" shall mean any adult person who resides in or on the premises involved in such party or social event and is present at such party or social event. For the purposes of this subsection, "noise" shall mean the same sounds, or any combination thereof, as described in paragraphs a. or b. above.

(2) *Restrictions of 100 feet for 11:00 p.m. through 7 a.m. Sunday through Thursday and 12:00 midnight through 7:00 a.m. on Saturday and Sunday.*

- (a) *Mechanical sound-making devices.* It is unlawful for any person or persons to play, use, operate, or permit to be played, used, or operated any radio receiving device, television, stereo, musical instrument, phonograph sound amplifier or other machines or devices for the producing, reproducing or amplifying of sound and/or noise at such a volume and in such a manner so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 100 feet or more from the building, structure, or motor vehicle or in the case of real property, beyond the property limits, in which it is located, whichever is farthest, between the hours of 11:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 12:00 midnight and 7:00 a.m. on Saturday and Sunday.
- (b) *Human-produced sound.* It is unlawful for any person or persons to yell, shout, hoot, whistle, or sing on the public streets or sidewalks or on private property so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 100 feet or more from the place on public streets and sidewalks, or in the case of private real property, beyond the property limits, on which the person is located, whichever is farthest, between the hours of 11:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 12:00 midnight and 7:00 a.m. on Saturday and Sunday.
- (c) *Commercial advertising.* It is unlawful for any person or persons to use, operate, or permit to be used or operated any radio receiving device, musical instrument, phonograph, loud speaker, sound amplifier or other machine or device for the production or reproduction of sound which is cast upon the public streets or other public property for the purpose of commercial advertising or which serves to attract the attention of the public to any building, structure or vehicle in such a manner so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 100 feet or more from the source of the sound cast upon the public streets or other public property or from the building, structure, or in the case of real property, beyond the property limits, in which it is located, whichever is farthest, between the hours of 11:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 12:00 midnight and 7:00 a.m. on Saturday and Sunday.
- (d) *Party noise.* It is unlawful for any person or persons in charge of a party or other social event that occurs on any private property to allow that party or event to produce noise in such a manner so as to such noise is

plainly audible at a distance of 100 feet or more from the building or structure from which the party noise is emanating or in the case of real property, beyond the property limits, on which the party or social event is located, whichever is farthest, between the hours of 11:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 12:00 midnight and 7:00 a.m. on Saturday and Sunday. For the purposes of this subsection, a "person in charge of a party or other social event" shall mean any adult person who resides in or on the premises involved in such party or social event and is present at such party or social event. For the purposes of this subsection, "noise" shall mean the same sounds, or any combination thereof, as described in paragraphs a. or b. above.

- (3) *Exclusions.* The prohibitions of this section shall not apply to the following:
- (a) Noises and/or sounds caused to be made by manufacturing, governmental, or commercial entities in the normal course of their business;
 - (b) Noises and/or sounds emanating from any official University of North Georgia event on University of North Georgia property or any Forsyth County School District event on Forsyth County School District property;
 - (c) Noises and/or sounds that are part of a special event sanctioned by the City of Cumming, Georgia, including but not limited to community celebrations on or in recognition of holidays (i.e. the 4th of July Steam Engine Parade), and events held at the Cumming Fairgrounds;
 - (d) Sound volumes produced by radio, tape player, or other mechanical sound making device or instrument from within a motor vehicle on a street or highway, which sound is controlled by the O.C.G.A. § 40-6-14; or
 - (e) Noises or sounds made by law enforcement and other public safety officials performing their public functions.
- (4) *Time restrictions on use of landscape maintenance motorized devices such as leaf blowers, lawn mowers, or chain saws.* It is unlawful for any person to use or operate any noise-generating, motorized landscape maintenance devices, including but not limited to leaf blowers, lawn mowers, or chain saws, within any residential zoning district or in areas within 300 feet of any residential zoning district from 9:00 p.m. to 6:00 a.m.
- (5) *Construction noise.* Between the hours of 11 p.m. and 6 a.m., construction noise of any type, including, but not limited to, noise caused by the erection (including excavation), demolition, alteration, or repair of any building, as well as the operation of any earth-moving equipment, crane, saw, drill, pile driver, steam shovel, pneumatic hammer, hoist, automatic nailer or stapler, or any similar equipment, shall not be plainly audible within any residential zoning district more than 100 feet beyond the property boundary of the property from which the noise emanates.

A variance from the above-referenced hours of operation for construction noise may be requested, in writing, at least 48 hours prior to the proposed construction operation, for consideration by the Director of the Planning and Zoning Department. Such a request shall state:

- (a) The reasons that support a claim of urgent need based on specific loss or inconvenience for such a variation from the allowable work hours;
- (b) The impact that the denial of this request would have on the applicant's project and the surrounding properties;
- (c) The steps which have been taken by the applicant to communicate those needs and impacts to owners of surrounding and nearby properties;
- (d) The steps that have or will be taken to limit the impact of the proposed activity upon surrounding and nearby properties; and
- (e) The possible risks to public health and safety.

If the Director finds that the application adequately demonstrates the urgent need for a variance from the above allowable work hours, adequately provides for mitigation of the impact upon surrounding and nearby properties, and poses no additional risk to public health and safety, then permission shall be granted for a variance to alter the allowable work hours during one ten-day period.

The prohibitions of this subparagraph (6) shall not apply to government road, water, sewer, stormwater construction or maintenance projects or to utility company construction, maintenance, or service restoration projects.

(6) *Commercial Entities near Single-Family Residential Zoning Districts.*

- (a) Notwithstanding any provisions of this section concerning noises and/or sounds caused to be made by commercial entities in the normal course of their business, the provisions and prohibitions of paragraph (c), "Prohibited Conduct," subparagraph (1), concerning "Restrictions of 300 feet for 7:00 a.m. through 11:00 p.m. Sunday through Thursday and 7:00 a.m. through 12:00 midnight on Friday and Saturday" and its subparts a. through c. shall apply to noises and/or sounds generated by a commercial entity that are plainly audible within any single-family residential zoning district more than 300 feet beyond the property boundary of the property from which the noises and/or sounds emanate.
- (b) Notwithstanding any provisions of this section concerning noises and/or sounds caused to be made by commercial entities in the normal course of their business, the provisions and prohibitions of paragraph (c), "Prohibited Conduct," subparagraph (2), concerning "Restrictions of 100 feet for 11:00 p.m. through 7:00 a.m. Sunday through Thursday and 12:00 midnight through 7:00 a.m. on Saturday and Sunday," and its subparts a. through c. shall apply to noises and/or sounds generated by a commercial entity that are plainly audible within any single-family residential zoning district more than 100 feet beyond the property boundary of the property from which the noises and/or sounds emanate.

(d) *Penalties.* Any person violating the provisions of this section shall be punished as provided by Section 1-11.

SECTION TWO. *Severability.* If any section, provision or clause of any part of this ordinance shall be declared invalid or unconstitutional, or if the provisions of any part of this ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this ordinance not so held to be invalid, or the application of this ordinance to other circumstances not so held to be invalid. It is hereby declared as the intent that this ordinance would have been adopted had such invalid portion not been included herein.

SECTION THREE. *Repealer.* All laws and parts of laws in conflict with this enactment are hereby repealed.

SECTION FOUR. *Effective Date.* This ordinance shall be effective the day following its passage by the Council of the City of Cumming.

SO ADOPTED AND ORDAINED by the City Council of Cumming, Georgia, this ____ day of _____, 2018.

[Executions on Following Page]

MAYOR AND CUMMING CITY COUNCIL

By: _____
Troy Brumbalow, Mayor

Lewis Ledbetter, Council Member

Linda Ledbetter, Council Member

ATTESTED TO BY:

Jeff Honea, City Clerk

Christopher Light, Council Member

Jason Evans, Council Member

Chad Crane, Council Member