

MEMORANDUM

To: Mayor and City Council
From: Ronnie Kurtz
Planner II
Date: April 22, 2019
Subject: Amendment to City of Dunwoody Ordinances
Chapter 18 – Noise

ITEM DESCRIPTION

Request to consider text amendments to the noise ordinance regarding fireworks (Chapter 18). The proposed changes serves to codify more stringent allowances for use of consumer fireworks than established in state law.

DISCUSSION

As amended in 2018, the Official Code of Georgia Annotated allows for the use of consumer fireworks on any day between the hours of 10 a.m and 11:59 p.m. The code allows for local governments to be more restrictive in their allowance of fireworks, except for on the following dates at the following times, when use of fireworks is to be legal statewide:

- a. On January 1 [New Year's Day], the last Saturday and Sunday in May [Memorial Day], July 3, July 4 [Independence Day], the first Monday in September [Labor Day], and December 31 [New Year's Eve] of each year after the time of 10 a.m. and up to and including the time of 11:59 p.m.; and
- b. On January 1 of each year beginning at the time of 12:00 Midnight and up to and including the ending time of 1:00 a.m.

The Dunwoody Municipal Code is currently silent in regards to fireworks; by default, then, fireworks are allowed as prescribed by state law.

Pursuant to the authority extended by state law, the proposed amendment limits the use of fireworks on nonexempt days to between the hours of 10 a.m. and 9 p.m. For clarity, the amendment explicitly mentions the dates and times at which state code preempts this restriction.

RECOMMENDATION

Staff recommends Mayor and City Council approve the attached draft changes to Chapter 18—Noise, as prepared.

Attachments:

Chapter 18—Noise, with edits

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE NO. 2018-__

AN ORDINANCE TO AMEND CHAPTER 18 (NOISE) TO AMEND ARTICLE II (PROHIBITED NOISES) TO AMEND THE HOURS WHEN FIREWORKS MAY BE USED; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, the Mayor and Council of the City of Dunwoody (“City Council”) are charged with the protection of the public health, safety, and welfare of the citizens of the City of Dunwoody; and

WHEREAS, The Dunwoody municipal code currently provides regulations which governs the use of fireworks; and

WHEREAS, The Georgia legislature previously amended the Official Code of Georgia Annotated to allow municipalities to regulate the use of fireworks under certain circumstances; and

WHEREAS, The Mayor and Council of the City of Dunwoody believe that amending the City of Dunwoody noise ordinance to restrict the use of fireworks during certain hours, as allowed by Georgia Law, would create uniformity in the Dunwoody noise regulations and regulate fireworks in a manner similar to neighboring jurisdictions; and

THEREFORE, THE MAYOR AND COUNCIL OF THE CITY OF DUNWOODY, GEORGIA HEREBY ORDAIN:

Section 1: Section 18-19 relating to Prohibited Noises is hereby amended to read as follows:

Sec. 18-19. - Loud or disturbing noises.

- (a) *Noises deemed nuisance. Noises considered loud or disturbing to health are deemed a nuisance. It shall be unlawful for any person to make, continue, or cause to be made or continued any loud, unnecessary, or unusual noise, or any noise which annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in the city.*
- (b) *Acts declared violations. The following acts are declared to be loud, disturbing, and unnecessary noise in violation of this section, but this enumeration shall not be deemed to be exclusive:*
- (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 in the city, except as a danger warning; the creation of any unreasonably loud or harsh sound by means of any signaling device; the sounding of any device for an unnecessary and unreasonable period of time; the use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any signaling device when traffic is for any reason held up.*
 - (2) *Radios, phonographs and similar devices. The playing, using or operating, or permitting to be played, used, or operated, of any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants or at any time with a volume louder than necessary for the convenient hearing of the person who is in the room, vehicle, or chamber in which the machine or device is operated and who is a voluntary listener thereto. The operation of any set, instrument, phonograph, machine, or device between the hours of 11:00 p.m. and 7:00 a.m. on weekdays and between the hours of 12:00 a.m. and 7:00 a.m. on weekends and holidays when the audibility of the prohibited noise is measured from property line of adjacent properties or the public right-of-way of the property shall be prima facie evidence of a violation of this section.*
 - (3) *Loudspeakers and amplifiers for advertising. The playing, using or operating, or permitting to be played, used, or operated, of 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 for the purpose of commercial advertising or attracting the attention of the public to any building or*

structure. Announcements over loudspeakers can only be made by the announcer in person and without the aid of any mechanical device.

- (4) *Yelling, shouting, hooting, whistling, or singing. Yelling, shouting, hooting, whistling, or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, dwelling, hotel, or other type of residence or of any person in the vicinity.*
- (5) *Animals and birds. The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any person in the vicinity.*
- (6) *Steam whistles. The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work, as a warning of fire or danger, or upon request of proper city authorities.*
- (7) *Exhausts. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine or motorboat except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.*
- (8) *Defect in vehicle or load. The use of any automobile, motorcycle, or vehicle so out of repair, so loaded, or in a manner as to create loud and unnecessary grating, grinding, rattling, or other noise.*
- (9) *Loading, unloading and opening boxes. The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates, and containers.*
- (10) *Construction or repair.*
 - a. *Construction of any type, including, but not limited to, the erection (including excavation), demolition, alteration, or repair of any building, as well as the operation of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, automatic nailer or stapler, or any similar equipment attended by loud or unusual noise, shall be prohibited during the following times:*
 1. *Before 7:30 a.m. or after 8:30 p.m. on weekdays;*
 2. *Before 8:00 a.m. or after 8:30 p.m. on Saturdays; and*
 3. *At any time on Sundays and/or the following legal holidays:*
 - (i) *New Year's Day (observed);*
 - (ii) *Memorial Day (observed);*

- (iii) *Independence Day (observed);*
 - (iv) *Labor Day (observed);*
 - (v) *Thanksgiving Day; and*
 - (vi) *Christmas Day (observed).*
- b. *Landscape contractors using any type of motorized mower or mechanical blower and other equipment which creates loud and excessive noise shall be prohibited, during the following times:*
1. *Before 7:30 a.m. or after 8:30 p.m. on weekdays;*
 2. *Before 8:00 a.m. or after 8:30 p.m. on Saturdays; and*
 3. *At any time on Sundays and/or the following legal holidays:*
 - (i) *New Years Day (observed);*
 - (ii) *Memorial Day (observed);*
 - (iii) *Independence Day (observed);*
 - (iv) *Labor Day (observed);*
 - (v) *Thanksgiving Day; and*
 - (vi) *Christmas Day (observed).*
- (11) *Schools, courts, places of worship and hospitals. The creation of any excessive noise on any street adjacent to any school, institution of learning, place of worship, or court, while in use, or adjacent to any hospital which unreasonably interferes with the normal operation of that institution, or which disturbs or unduly annoys patients in the hospital, provided that conspicuous signs are displayed in those streets indicating a school, hospital, or court street.*
- (12) *Hawkers, peddlers and vendors. The shouting and crying of peddlers, hawkers, and vendors which disturb the peace and quiet of the neighborhood.*
- (13) *Noise to attract attention. The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, or sale.*
- (14) *Transportation of metal rails, similar materials. The transportation of rails, pillars, or columns of iron, steel, or other material over and along streets and other public places so as to cause loud noises or as to disturb the peace and quiet of those streets or other public places.*

- (15) *Blowers. The operation of any noise-creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from the blower or fan is muffled and the engine is equipped with a muffler device sufficient to deaden the noise.*
- (16) *Sound trucks. The use of mechanical loudspeakers or amplifiers on trucks or other moving or standing vehicles for advertising or other commercial purposes; the use of sound trucks for noncommercial purposes during hours and in places and with volume as would constitute this use as a public nuisance, provided that the provisions of this section shall not apply to or be enforced against:*
- a. *Any vehicle of the city while engaged in necessary public business;*
 - b. *Reserved.*
 - c. *The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character.*
- (17) *Consumer fireworks. The use or exploding of consumer fireworks between the hours of 9:00 p.m. and 10:00 a.m., except on the following dates, and at the following times:*
- a. *On January 1, the last Saturday and Sunday in May, July 3, July 4, the first Monday in September, and December 31 of each year after the time of 10 a.m. and up to and including the time of 11:59 p.m.; and*
 - b. *On January 1 of each year beginning at the time of 12:00 Midnight and up to and including the ending time of 1:00 a.m.*
- (c) *Exemptions.*
- (1) *Emergency repair work as determined by the City of Dunwoody is exempt from this section.*
 - (2) *Utility and/or road work and repairs done under the approval or authority of the City of Dunwoody, DeKalb County, or State of Georgia are exempt from this section.*
- (d) *Exceptions for commercial, office, institutional, and industrial construction-related activities. An application for a noise ordinance exception may be submitted to the City of Dunwoody Community Development Director or his/her designee, and the chief of police, on a form and according to a schedule*

determined by the city. Within ten days of receipt, applications shall be either (1) approved or conditionally approved in part or whole or (2) denied.

(1) Such application shall state the following:

- a. The reason that an exception from the provisions of this section are needed;*
- b. The impact that a denial would have on the applicant's project;*
- c. How the exception may reduce the impact on the public health, safety or welfare;*
- d. How the exception is critical to ongoing construction needs and how it would be impractical or unreasonable to perform this work during normal prescribed days/times;*
- e. What measures are being incorporated or offered to protect the public health, safety and welfare;*
- f. What notice will be provided to surrounding property owners regarding potential noise;*
- g. The time during which the proposed activity will occur;*
- h. The duration of the proposed activity; and*
- i. Incomplete applications will not be accepted.*

(2) The review of the application shall, at a minimum, consider the following factors:

- a. The entirety of the application and information provided therewith;*
- b. The impact that denial would have on the project and property in the general vicinity;*
- c. Whether compliance with the prescribed construction noise regulations would impose an unreasonable hardship on the applicant;*
- d. Whether compliance would create a hardship on the general public, including public roads and infrastructure, that would be alleviated by the exception;*
- e. Whether noise levels generated from the proposed activity will constitute a danger to the public health, safety, or welfare;*
- f. Any inconvenience, imposition, and impact on surrounding residences and the duration of said impact weighed against the hardship compliance would create;*

- g. *The ability of the applicant to apply best management practices for controlling noise;*
 - h. *The location of the activity and the nature of the surrounding area; and*
 - i. *The time/duration of the activity being requested.*
- (3) *Reasonable conditions may be imposed by the reviewing authority to minimize the public impact, whether by duration, sound proofing, construction methods, hours of operation, sound levels, alternative access routes or equipment, or other appropriate measures.*
- (4) *Any approved construction noise exception may be revoked by the director of community development and the chief of police if the terms of the authorization are violated.*
- a. *An exception may be revoked if there is a:*
 - 1. *Violation of one or more conditions of the approval;*
 - 2. *Material misrepresentation of fact in the application;*
 - 3. *Material change in any of the circumstances relied upon in granting the approval.*
- (5) *Due to unforeseen and changing circumstances an approved exception may be rescheduled by the city approving authority.*

(Comp. Ords. 2008, ch. 16, art. 7, § 12; Ord. No. 2017-02-04, §§ 1, 2, 2-27-2017)

Section 2

a. It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence,

clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section paragraph, sentence, clause or phrase of this Ordinance.

c. In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Section 3

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Section 4

This Ordinance shall be codified in accordance with state law and the Code of the City of Dunwoody, Georgia. This Ordinance shall become effective upon adoption.

SO ORDAINED, this ___ day of _____, 2019.

Approved by:

Approved as to Form and Content

Denis L. Shortal, Mayor

City Attorney's Office

Attest:

Sharon Lowery, City Clerk

SEAL