

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

ORDINANCE NO. 2009-11

AN ORDINANCE TO PROHIBIT EXCESSIVE, UNNECESSARY AND
UNREASONABLE NOISE AND PUBLIC NUISANCES

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF SANTA FE:

Section 1 – Title. Sections 1 through 10 shall be known as the Santa Fe County Noise Control and Public Nuisance Ordinance.

Section 2 – Definitions.

- (1) "Idling speed" means a speed at which an engine will run when no pressure is applied to the accelerator or accelerator linkage.
- (2) "Noise sensitive unit" means any building or portion thereof, vehicle, or other structure adapted or used for the overnight accommodation of persons, including, but not limited to, individual residential units, individual apartments, trailers, hospitals, and nursing homes.
- (3) "Person" means any individual, any public or private corporation, association, partnership, or other legally recognized public or private entity.
- (4) "Plainly audible" means unambiguously communicated to the listener. Plainly audible sounds include, but are not limited to, understandable musical rhythms, understandable spoken words, and vocal sounds other than speech which are distinguishable as raised or normal.
- (5) "Sound producing device" means:
 - (a) Loudspeakers, public address systems;
 - (b) Radios, tape recorders or tape players, phonographs, television sets, stereo systems, including those installed in a vehicle;
 - (c) Musical instruments, amplified or unamplified;

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- (d) Sirens, bells;
- (e) Vehicle engines or exhausts, when vehicle is not on a public right-of-way, particularly when the engine is operating above idling speed;
- (f) Vehicle tires, when caused to squeal by excessive speed or acceleration;
- (g) Domestic tools; including electric drills, chain saws, lawn mowers, electric saws, hammers, and similar tools, but only between 10 p.m. and 7 a.m.
- (h) Heat pumps, air conditioning units, and refrigeration units, including those mounted on vehicles.
- (6) "Vehicle" means automobiles, motorcycles, motorbikes, trucks, and buses.

Section 3 – Findings and Policy.

- (1) The Board of Commissioners for Santa Fe County finds that excessive sound can and does constitute a hazard to the health, safety, welfare, and quality of life of residents of the county.
- (2) The Board determines that while certain activities essential to the economic, social, political, educational and technical advancements of the citizens of the county necessarily require the production of sounds which may offend, disrupt, intrude and otherwise create hardship among the citizenry, the Board is obliged to impose some limitations and regulation upon the production of excessive sound as will reduce the deleterious effects thereof.
- (3) It is, therefore, the policy of the Board to prevent and regulate excessive sound wherever it is deemed harmful to the health, safety, welfare and quality of life of the citizens of Santa Fe County. This ordinance shall be liberally construed to effectuate that purpose.
- (4) The Board further finds that the existence of public nuisances can result in visual and environmental blight, and unhealthy, unsafe and devaluating conditions.
- (5) NMSA 1978, §3-18-17(A) (1965) (as amended) permits a County “by ordinance [to] define a nuisance, abate a nuisance and impose penalties upon a person who creates or allows a nuisance to exist.” The Board determines that it is necessary to control and limit harmful visual and environmental property blight that can adversely impact the character of a neighborhood, public health, safety and general welfare of the citizens of Santa Fe County.

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(6) It is, therefore, the policy of the Board to regulate and abate public nuisances deemed harmful to the health, safety, welfare and quality of life of the citizens of Santa Fe County. This ordinance shall be liberally construed to effectuate that purpose. Provisions of this ordinance are to be supplementary and complementary to state law and other governing law, including, without limitation, other county ordinances (*see, e.g.*, Santa Fe County Land Development Code Ordinance 1996-10, Art. VII, Sec. 5 and Santa Fe Oil and Gas Ordinance No. 20008-19, Sec. 11.23), and nothing herein shall be read, interpreted or construed in any manner to limit any right of the County or private parties to abate any and all nuisances as may otherwise be permitted by law.

Section 4 – Administration and Enforcement.

(1) The Sheriff of Santa Fe County shall administer, supervise and perform all acts necessary to enforce this ordinance, with the exception of Sections 9, 10 and 12 hereof which shall be administered, supervised and performed through the County Land Use Department.

(2) Upon citation of a person for a violation of this ordinance, the person issuing the citation may seize as evidence the sound producing device which was the source of the sound. The sound producing device, if seized, shall be impounded subject to disposition of the issued citation and determination by the court. It is the intent of this ordinance to avoid such seizures, except where the person being cited has received two previous citations within the previous six months for the use of the same or similar sound producing device. The previous citations may, but need not, occur on the same date as the citation which prompts the seizure.

Section 5 – Sound Measurement.

(1) If measurements are made, they shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. For purposes of this chapter, a sound level meter shall contain at least an A weighed scale and both fast and slow meter response capability.

(2) If measurements are made, personnel making those measurements shall have completed training in the use of the sound level meter, and measurement procedures consistent with that training shall be followed.

(3) Measurements may be made at 25 feet of the exterior boundary of a noise sensitive unit which is not the source of the sound, or within a noise sensitive unit which is not the source of the sound.

(4) All measurements made pursuant to this ordinance shall comply with the provisions of this section.

Section 6 – Sound Prohibitions.

It shall be unlawful for any person to produce or permit to be produced, with a sound producing device, sound which:

(1) When measured at 25 feet of the exterior perimeter of a noise sensitive unit which is not the source of the sound, or within a noise sensitive unit which is not the source of the sound, exceeds:

(a) 60 dBA at any time between 10 p.m. and 7 a.m., or

(b) 75 dBA at any time between 7 a.m. and 10 p.m., and the sound exceeds the levels identified in paragraphs (a) and (b) of this subsection for five consecutive minutes or ten minutes in any one-half hour period, or when intermittent sounds exceed the identified levels ten or more times in any one-half hour period.

(2) Notwithstanding any other provision of subsection (1) above, prohibited sounds shall not exceed 15 dBA above the levels identified in paragraphs (a) and (b) of subsection (1) of this section for any duration, except as may otherwise be provided herein.

(3) If the noise source is an idling vehicle licensed to travel upon public roads of the state, the noise source shall not be allowed to exceed the levels identified in paragraphs (a) and (b) of subsection (1) of this section for more than 15 consecutive minutes between 10:00 p.m. and 7:00 a.m. and 20 minutes between 7:00 a.m. and 10:00 p.m. At no time may the sound from an idling vehicle, when measured in accordance with subsection (1) of this section, exceed 15 dBA more than the levels established therein, except as may be otherwise provided herein.

(4) If a measurement of the sound is made, subsection (1) of this section shall supersede subsection (2) of this section and shall be used to determine if a violation exists.

Section 7 – Sound Exceptions.

Notwithstanding Section 6, the following exceptions from this ordinance are permitted:

- (1) Sounds caused by organized athletic or other group activities, when those activities are conducted on property generally used for those purposes, including: stadiums, parks, schools, churches, athletic fields, race tracks, and airports; provided, however, that this exception shall not impair the Sheriff's power to declare the event or activities otherwise to violate other laws, ordinances, or regulations.
- (2) Sound caused by emergency work, or by the ordinary and accepted use of emergency equipment, vehicles and apparatus, whether or not the work is performed by a public or private agency upon public or private property.
- (3) Sounds caused by sources regulated as to sound production by federal law, including, but not limited to, sounds caused by railroad or aircraft.
- (4) Sounds caused by bona fide use of emergency warning devices and alarm systems.
- (5) Sound caused by blasting activities when performed under a permit issued by appropriate governmental authorities and only between the hours of 9 a.m. and 4 p.m., excluding weekends, unless the permit expressly authorizes otherwise.
- (6) Sounds caused by industrial or construction organizations or workers during their normal operations.
- (7) Sounds created during agricultural operations.
- (8) Sounds made by activities by or on direction of Santa Fe County or any other public or private utility in maintenance, construction, or repair of public or utility improvements in public rights-of-way, easements, or property.

Section 8 – Sound Variances.

Any person who is planning the use of a sound producing device which may violate any provision of this ordinance may apply to the Sheriff for a variance from the provision:

- (1) The application shall state the provision from which a variance is being sought, the period of time the variance is to apply, the reason for which the variance is sought, and other supporting information which the Sheriff may reasonably require.
- (2) The Sheriff shall consider:
 - (a) The nature and duration of the sound emitted.

- (b) Whether the public health, safety or welfare is endangered.
- (c) Whether compliance with the provision would produce no benefit to the public.
- (d) Whether previous permits have been issued and the applicant's record of compliance.
- (3) A variance may be granted for a specific time interval only.
- (4) The sheriff shall, within ten days, deny the application, approve it, or approve it subject to conditions.
- (5) The Sheriffs decision may be appealed to the Board of County Commissioners. Notice of appeal should be delivered to the County Manager. The Board shall review the application at a regularly scheduled meeting *de novo* and deny the application, approve it, or approve it subject to conditions.
- (6) The Sheriff may at any time before or during the operation of a variance granted by the Sheriff revoke the variance for good cause. The Board may at any time before or during the operation of any variance revoke the variance for good cause.

Section 9 – Acts Declared a Public Nuisance.

- (1) Abandoned property. Any deteriorated, wrecked, dismantled or partially dismantled, inoperable and/or abandoned property in unusable condition having no value other than nominal scrap or junk value, which has been left unprotected outside of a permanent structure from the elements. Without being so restricted this shall include deteriorated, wrecked, dismantled or partially dismantled, inoperable, abandoned motor vehicles, abandoned mobile homes, trailers, boats, machinery, refrigerators, washing machines and other appliances, plumbing fixtures, furniture, building materials and any other similar articles in such condition.
- (2) Breeding place for flies, rodents and/or pests. The unhealthful accumulation or stockpiling of manure, garbage, tires, debris or discarded items which is a potential harboring place and breeding area for flies and rodents.
- (3) Burning of any excrement, chemical or plastic substances, or any liquid or substance in violation of Federal or State dischargeable substances statutes or County ordinances on any property. This includes the burning of any tires, rubber products, asphalt shingles, plastic, tar paper or any substance which may cause a black, hydrocarbon, toxic, or noxious plume of smoke.

- (4) Combustible materials. Any dangerous accumulation upon any property of combustible refuse matter such as papers, sweepings, rags, grass, dead trees, tree branches, wood shavings, wood, magazines, cardboard, etc.
- (5) Dead animals. For the owner of a dead animal to permit it to remain undisposed for more than seventy-two (72) hours.
- (6) Disposal or dumping. The accumulation of garbage, refuse, waste, trash, rubbish or building materials upon any property outside an approved landfill.
- (7) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a fire hazard
- (8) All disagreeable or obnoxious odors or stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches, including smoke and fires, except the odors from existing agricultural lands.
- (9) The pollution of any public well, stream, lake, canal, or body of water by sewage, dead animals, dairy waste, industrial wastes, agricultural wastes, or other substances.
- (10) Any building, structure, or other place or location where any activity is conducted, performed or maintained in violation of local, state, or federal law.

Section 10 – Public Nuisance Prohibitions and Enforcement.

It shall be unlawful for any person who is the owner of property to cause, permit, maintain, or allow the creation or maintenance of a public nuisance as described in Section 9 hereof on such property. For purposes of this ordinance the owner of property means the person in control of the property, or the owner's representative, an agent or attorney-in-fact of the owner. Enforcement of a violation of Section 9, and administration, supervision or performance of actions taken pursuant to Section 12 shall be through the County Land Use Department.

Section 11 – Exceptions.

This ordinance shall not apply to practices operating under a conditional use permit issued by the County.

Section 12 – Removal of Public Nuisance.

(1) Whenever the County finds that a person has caused, permitted, maintained or allowed the creation or maintenance of a public nuisance, the County shall give or cause to be given written notice of violation of this ordinance by certified mail to the owner of property on which the public nuisance is situate that the public nuisance must be permanently removed within fifteen (15) calendar days of notice being sent.

(2) The owner of property may elect to have the County remove the public nuisance if the County, in its sole discretion, determines that it has sufficient staff and resources to complete the removal. The owner of the property may be required to reimburse the County for the removal and related administrative costs.


(3) The County may apply to a court of competent jurisdiction for an order or orders to compel removal of a public nuisance.

Section 13 – Additional Remedies.

The provisions of this ordinance shall be cumulative and non-exclusive and shall not affect any other claim, cause of action, or remedy; nor, unless specifically provided, shall it be deemed to repeal, amend, or modify any law, ordinance, or regulation relating to noise or sound but be deemed additional to existing legislation and common law on such subject.

Section 14 – Penalties. Any person found guilty of violating this ordinance may be punished in accordance with NMSA 1978, § 4-37-3 (1975) (as amended).

PASSED, ADOPTED AND APPROVED this 29 day of October, 2009 by the Santa Fe County Board of County Commissioners.



MICHAEL D. ANAYA, CHAIRMAN

ATTEST:

Valerie Espinoza

VALERIE ESPINOZA, COUNTY CLERK

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

Stephen C. Ross
STEPHEN C. ROSS, COUNTY ATTORNEY



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COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

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PAGES: 9

I Hereby Certify That This Instrument Was Filed for
Record On The 5TH Day Of November, 2009 at 11:13:20 AM
And Was Duly Recorded as Instrument # 1582401
Of The Records Of Santa Fe County

Marcella
Deputy _____
Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM