

STATE OF GEORGIA
COUNTY OF FULTON

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SANDY SPRINGS, GEORGIA TO AMEND AND ADOPT CHAPTER 38 (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE 3 (OFFENSES INVOLVING PUBLIC PEACE, ORDER AND SAFETY), DIVISION II (NOISE), TO PROVIDE FOR REGULATION OF NOISE; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

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

WHEREAS, the Georgia legislature passed House Bill 419 (“H.B. 419”) during the 2018 legislative session regulating the use and ignition of consumer fireworks; and

WHEREAS, H.B. 419 provides that any noise ordinance of a municipal corporation which is to have effect for purposes of regulating the use and ignition of consumer fireworks shall have been enacted or reenacted on or after July 1, 2018, subject to certain conditions; and

WHEREAS, Chapter 38, Article III, Division 2 (the “**Ordinance**”) of the Sandy Springs Code of Ordinances (the “**Code**”) is a general noise ordinance concerning all manner of sounds or noises; and

WHEREAS, the City does not have any ordinance separately pertaining to sounds or noises emanating exclusively from consumer fireworks; and

WHEREAS, the Ordinance comes before the City Council at its August 7, 2018 regular session meeting (the “**Council Meeting**”) for consideration of its re-enactment and ratification; and

WHEREAS, notice of the Council Meeting was published one time at least 15 days in advance of the Council Meeting in the legal organ of the City stating the date, time, and place of such meeting and that such noise ordinance which will affect the use of consumer fireworks will be acted upon; and

WHEREAS, notice of the Council Meeting was posted on the homepage of the City’s official website for at least seventy-two (72) hours at least fifteen (15) days in advance of the meeting stating the date, time, and place of such meeting and that such noise ordinance which will affect the use of consumer fireworks will be acted upon; and

WHEREAS, the City Council have determined that it is appropriate to modify, re-enact and affirm the Ordinance to conform to the provisions of H.B. 419 to further protect the public health, safety, and welfare of the citizens of Sandy Springs.

BE IT ORDAINED by the Mayor and City Council of the City of Sandy Springs, Georgia that the City’s Code of Ordinances is amended and re-enacted as follows:

SECTION I: Chapter 38, relating to Offenses and Miscellaneous Provisions, Article III, Division 2 is hereby amended and re-enacted in its entirety, and will read as follows:

DIVISION 2. - NOISE

Sec. 38-81. - Purpose and intent.

- (a). Excessive sound is a serious hazard to the public health, welfare, safety, and the quality of life, and a substantial body of science and technology exists by which excessive sound may be substantially abated, and the people have a right to, and should be ensured an environment free from excessive sound.
- (b). In order to ensure attractive residential and commercial areas, it is necessary that an audibly satisfying environment be maintained. It is the policy of the mayor and council to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life. The city is more likely to attract permanent residents and commercial enterprises if it controls and maintains appropriate noise quality, and the residents will ultimately gain financial improvements and protection in their quality of life as a result of these regulations.
- (c). This division shall apply to the control of sound originating from sources within the limits of the city.
- (d). No provisions of this chapter shall apply to the emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.

Sec. 38-82. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A-weighted sound level 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 as dB(A) or dBA.

Commercial District means, for the purposes of this chapter, any parcel of land in an area zoned for commercial use, consisting of public streets, public sidewalks and pedestrian walkways, public open spaces, outdoor cafe areas operated under any permit granted by the city, public or privately-owned alleys and any privately-owned outdoor property that is open to the public for commercial or recreational purposes.

Decibel (dB) means a unit for measuring the volume of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (twenty (20) micronewtons per square meter).

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

Instrument, machine or device means and refers to any musical instrument, radio, phonograph, compact disc player, cassette tape player, amplifier or any other machine or device for producing, reproducing or amplification of sound.

Motor carrier vehicle engaged in interstate commerce means any vehicle for which regulations apply pursuant to section 18 of the Federal Noise Control Act of 1972 (P.L. 92-574), as amended, pertaining to motor carriers engaged in interstate commerce.

Motorcycle means any motor vehicle designed to travel on not more than three (3) wheels in contact with the ground and any four-wheeled vehicle weighing less than five hundred (500) pounds and equipped with an engine of less than six (6) horsepower, excepting farm tractors.

Motor vehicle means any self-propelled device or device designed for self-propulsion, upon or by which any person or property is or may be drawn or transported upon a street or highway, except devices moved by human power or used exclusively upon stationary wheels or tracks.

Noise means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

Property boundary means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned, leased or otherwise legally controlled by one (1) person from that owned, leased or otherwise legally controlled by another person, including intra-building real property divisions.

Residential zone means any location within a Protected or Urban Neighborhood as set forth in the City of Sandy Springs Development Code.

Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Sound generation means any conduct, activity or operation, whether human, mechanical, electronic or other, and whether continuous, intermittent or sporadic, and whether stationary or ambulatory in nature, which produces or results in an audible sound.

Sound level means the weighted sound pressure level obtained by the use of a sound level meter and the A-frequency weighting network, as specified in American National Standards Institute specifications for sound level meters.

Sound level meter means an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting networks used to measure sound pressure levels.

Sec. 38-83. - Enforcement officers.

- (a). The provisions of this division shall be enforced by the code enforcement officers and/or the police officers of the city.
- (b). The director of the department of community development, or his/her designee, and the chief of police, or his/her designee, shall have the power to:
 - 1) Coordinate the noise control activities of all municipal departments and cooperate with all other public bodies and agencies to the extent practicable;
 - 2) Review the actions of other municipal departments and advise such departments to the effect, if any, of such actions on noise control;
 - 3) Review public and private projects, subject to mandatory review or approval by other departments or boards, for compliance with this division; and
 - 4) Grant permits for variances according to the provisions of section 38-86.
- (c). A code enforcement officer or police officer shall be qualified to enforce the provisions of this division if he/she has satisfactorily completed any of the following:
 - 1) An instructional program in community noise from a certified noise control engineer, as evidenced by certification from the Institute of Noise Control Engineering (INCE);
 - 2) An instructional program in community noise from another qualified code enforcement officer or police officer; or

- 3) Education or experience or a combination thereof certified by the director of the department of community development or the chief of police as equivalent to the provisions of subsections (c)(1) or (2) of this section.
- (d). Noise measurements taken by a code enforcement officer or police officer shall be taken in accordance with the procedures specified in this division and as promulgated by the chief of police pursuant to section 38-86 herein.

Sec. 38-84. - Duties and responsibilities of other departments.

- (a). All departments and agencies of the municipality shall carry out their programs according to law and shall cooperate with the director of the department of community development and the chief of police in the implementation and enforcement of this division.
- (b). All departments charged with new projects or changes to existing projects that may result in the production of noise shall consult with the director of the department of community development and the chief of police, prior to the approval of such projects, to ensure that such activities comply with the provisions of this division.

Sec. 38-85. - Enforcement procedures.

- (a). Upon occurrence of a violation of this division, code enforcement officers or police officers having jurisdiction in the area where the violation takes place may issue a citation or summons for the violation returnable to the municipal court of the city.
- (b). In lieu of issuing a citation or summons the director of the department of community development and chief of police may issue an order requiring abatement of any sound source alleged to be in violation of this division within a reasonable time period and according to guidelines that the director or chief may prescribe.
- (c). No provision of this division shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this division or from other law.

Sec. 38-86. - Testing of sound level meters.

In order to implement and enforce this chapter effectively, the chief of police shall develop and promulgate standards and procedures for testing and validating sound level meters used in the enforcement of this chapter.

Sec. 38-87. - Maximum sound levels in residential zones.

- (a) *Nighttime*. No person shall permit, operate or cause any source of sound to create a sound level in a residential zone or within any residential building during the hours between 11:00 p.m. and 7:00 a.m. in excess of fifty-five (55) dB(A) or ten (10) dB(A) above ambient levels (whichever is more), when measured at or outside the property boundary.
- (b) *Daytime*. No person shall permit, operate or cause any source of sound to create a sound level in a residential zone or within any residential building during the hours between 7:00 a.m. and 11:00 p.m. in excess of sixty-five (65) dB(A) or ten (10) dB(A) above ambient levels (whichever is more), when measured at or outside the property boundary.
- (c) *Measurements in multifamily structures*. In a structure used as a multifamily dwelling the police department may take measurements to determine sound levels from common areas within or outside the structure or from other dwelling units within the structure, when requested to do so by the owner or tenant in possession and control thereof. Such measurement shall be taken at a point at least four (4) feet from the wall, ceiling or floor nearest the noise source, with doors to the receiving area closed and windows in the normal position for the season.

- (d) *Exemptions.* The following activities or sources of noise shall be exempt from the daytime prohibition set forth in subsection (b) of this section:
 - (1) Band performances or practices, athletic contests or practices and other school-sponsored activities on the grounds of public or private schools.
 - (2) Athletic contests and other officially sanctioned activities in city parks.
 - (3) Activities related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property, except as further regulated pursuant to Sec. 38-93(a), below.
 - (4) Gardening, lawn care, tree maintenance or removal and other landscaping activities, except that all professional landscaping companies are further regulated pursuant to Sec. 38-93(b), below.
 - (5) Church bells or carillons.
 - (6) Religious or political gatherings and other activities protected by the First Amendment to the United States Constitution.
 - (7) Activities for which the regulation of noise has been preempted by state or federal law.

Sec. 38-88. - Motor vehicle maximum sound levels; amplified sound from vehicles.

- (a) No person shall operate or cause to be operated a public or private motor vehicle or motorcycle on a public right-of-way at any time in such a manner that the sound level emitted by the motor vehicle or motorcycle, when measured at a distance of fifty (50) feet or more, exceeds the level set forth in the following table:

| Vehicle Class | Sound level in dBA | |
|---|----------------------------|-------------------------|
| | Speed limit 35 MPH or less | Speed limit over 35 MPH |
| All motor vehicles of GVWR or GCWR of 6,000 lbs. or more | 86 | 90 |
| Any motorcycle | 82 | 86 |
| Any other motor vehicle or any combination of vehicles towed by any motor vehicle | 76 | 82 |

- (b) This section shall not apply to any motor carrier vehicle engaged in interstate commerce.
- (c) Notwithstanding any other provisions of this section or provisions of this chapter related to noise, it shall be unlawful for any person to play or operate or permit the playing, use or operation of any radio, tape player, compact disc player, loud speaker or other electronic device used for the amplification of sound, which is located within a motor vehicle being operated or parked on public or private property within the city, including any public or private street or alley, in such manner as to disturb the peace, quiet and comfort of passersby or other persons outside of the subject motor vehicle. The operation of any such machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be audible to the human ear at a distance of one hundred (100) or more feet from the vehicle in which it is located shall be prima facie evidence of a violation of this section. Such acts for purposes of this

subsection are hereby found to be the creation of unreasonably loud, disturbing and unnecessary noise in the city.

The provisions of this subsection shall not apply to motor vehicles driven in a duly authorized parade, nor to motor vehicle alarms or other security devices.

Sec. 38-89. - Sound levels; Commercial/Mixed Use District.

- (a) In any Commercial/Mixed Use District, it shall be unlawful for any person to make, cause or continue any sound generation in such a manner as to unreasonably disturb the comfort, health, peace, quiet, safety, or welfare of others.
- (b) The use or operation of any instrument, machine, device or human voice between the hours of 7:00 a.m. to 10:59 p.m. in such a manner to cause a sound generation in excess of eighty (80) db(A) or ten (10) db(A) above ambient levels (whichever is more), when measured at or beyond the property boundary at a distance of ten (10) feet or more from the source of the sound generation shall constitute prima facie evidence of a violation of section 38-89(a) above.
- (c) The use or operation of any instrument, machine, device or human voice between the hours of 11:00 p.m. to 6:59 a.m. in such a manner to cause a sound generation in excess of sixty (60) db(A) or ten (10) db(A) above ambient levels (whichever is more), when measured at or beyond the property boundary at a distance of ten (10) feet or more from the source of the sound generation shall constitute prima facie evidence of a violation of section 38-89(a) above.
- (d) The prohibitions set forth within this section shall not apply to any sound generation which occurs:
 - (1) As part of a City sponsored event; or
 - (2) From public and private transportation, refuse collection and sanitation services.
- (e) Sound generation from a special event, conducted in accordance with a valid permit issued by the city in accordance with the city's special events regulations, shall be in compliance with the noise level and sound amplification requirements set forth in the permit for that special event, in lieu of the prohibitions set forth within this section. In the event that no sound amplification requirements are set forth in the permit for that special event, the prohibitions set forth in this section shall control.

Sec. 38-90. - Sound levels; Public property.

- (a) On any public property, including without limitation all public rights-of-way, it shall be unlawful for any person to make, cause or continue any sound generation in such a manner as to unreasonably disturb the comfort, health, peace, quiet, safety, or welfare of others.
- (b) The use or operation of any instrument, machine, device or human voice to cause a sound generation in excess of seventy-five (75) db(A) when measured at a distance of ten (10) feet or more from the source of the sound generation shall constitute prima facie evidence of a violation of section 38-90(a) above.
- (c) This section shall not apply to motor vehicles and amplified sounds from motor vehicles, which are subject to the provisions of section 38-88 above.
- (d) Sound generation from a special event, conducted in accordance with a valid permit issued by the city in accordance with the city's special events regulations, shall be in compliance with the noise level and sound amplification requirements set forth in the permit for that special event, in lieu of the prohibitions set forth within this section. In the event that no sound amplification requirements are set forth in the permit for that special event, the prohibitions set forth in this section shall control.

Sec. 38-91. - Sound level measurement.

- (a) The decibel level of any noise regulated by this chapter may be measured by the use of a sound level meter which measures sound pressure levels. Such measurements shall be accepted as prima facie evidence of the level of noise at issue in any court or legal proceeding to enforce the provisions of this chapter.
- (b) The accuracy of the sound level meter may be tested by a calibrator. Any sworn report of the results of any test of the calibrator for the accuracy of a sound level meter shall be admissible in court in any criminal or civil proceeding, as evidence of the facts therein stated.
- (c) An individual operating a sound level meter pursuant to the provisions of this chapter shall issue a certificate to indicate:
 - (1) That the sound level meter used to take the decibel level reading was operated in accordance with the manufacturer's specifications;
 - (2) That the city has on file a sworn report which states that the sound level meter has been tested within the past twelve (12) months and has been found to be accurate;
 - (3) The name of the accused;
 - (4) The location of the noise;
 - (5) The date and time that the reading was made; and
 - (6) The decibel level reading.

Such certificate, when attested by the operator taking the decibel level reading, shall be admissible in court in any criminal or civil proceeding as evidence of the facts therein stated and of the decibel level reading. A copy of the certificate shall be delivered to the accused upon request.

Sec. 38-92. - Variances.

- (a). Variances to the provisions contained in this division may be requested, in writing, at least 48 hours prior to the proposed operation or event, for consideration by the director of the department of community development and the chief of police. Such a request shall state the following:
 - 1) The reasons that a variance from the provisions of this division are needed;
 - 2) The impact that the denial of this request will have on the applicant's project or event and the surrounding properties;
 - 3) The steps which have been taken by the applicant to communicate those needs and impacts to owners of surrounding and nearby properties;
 - 4) The steps that have or will be taken to limit the impact of the proposed activity upon surrounding and nearby properties, activities and uses;
 - 5) The time at which the proposed activity that requires a variance will occur; and
 - 6) The duration of the proposed activity that requires a variance to the provisions of this division.
- (b). No variance shall be approved unless the applicant presents adequate proof that:
 - 1) Noise levels occurring during the period of the variance will not constitute a danger to public health; and
 - 2) Compliance with this division would impose an unreasonable hardship on the applicant; or
 - 3) Compliance with this division would prevent a benefit to the public equal to or greater than any detriment caused by noncompliance.
- (c). In making the determination of granting a variance, the director of the department of community development and the chief of police shall consider the following:

- 1) The character and potential or actual degree of injury to, or interference with, the health and welfare of the public or the reasonable use of adjoining properties;
 - 2) The social and economic value of the activity for which the variance is sought;
 - 3) The ability of the applicant to apply the best practical noise control measures;
 - 4) The time and duration of the activity for which the variance is sought; and
 - 5) The location of the activity in relationship to adjoining properties, uses and activities.
- (d). If the director of the department of community development and the chief of police find that the variance application adequately demonstrates the need for a variation from the provisions of this division and adequately provides for the amelioration of the impact upon surrounding and nearby properties, an administrative variance shall be granted allowing for one variation within one 24-hour period. For commercial development, a second administrative variance may be granted for an additional 24-hour period upon demonstration of just cause and amelioration of impact upon surrounding and nearby properties. Thereafter, a residential or commercial applicant may request up to three additional variances to the provisions of this division by submission to the zoning board of appeals.
- (e). The permit of variance may be revoked by the director of the department of community development and the chief of police if the terms of the permit of variance are violated. A variance may be revoked if there is a:
- 1) Violation of one or more conditions of the variance;
 - 2) Material misrepresentation of fact in the variance application; or
 - 3) Material change in any of the circumstances relied on in granting the variance.
- (f). Upon request of the applicant no less than 48 hours prior to the date granted for a variance, in the event of unforeseen circumstances, including without limitation forecast of inclement weather, which in the sole discretion of the director of the department of community development and the chief of police renders the approved date of the permit of variance unreasonable, impractical or impossible to carry out the stated purpose of the variance, the director of the department of community development and the chief of police shall have the authority to approve an alternative date for any permit of variance issued pursuant to this division.

Sec. 38-93. - 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, stream or electric hoist, automatic nailers or staplers, or any similar equipment attended by noise exceeding 55dB(A) when measured at or outside the property boundary, shall be prohibited during the following times: Before 7:30 a.m. or after 7:30 p.m. on weekdays, and before 8:00 a.m. or after 5:00 p.m. on Saturdays, and at any time on Sundays and/or legal holidays (New Years' Day (as observed by the city), Memorial Day, Independence Day (as observed by the city), Labor Day, Thanksgiving Day and Christmas Day (as observed by the city)). Notwithstanding the foregoing, interior construction shall be permitted on Saturdays and Sundays subject to the provisions of Secs. 38-87(a) and (b) or Sec. 38-89 above, as applicable.
- (b). Landscape contractors using any type of motorized mowers or mechanical blowers and other equipment which create noise exceeding 55dB(A) when measured at or outside the property boundary shall be prohibited, during the following times: Before 7:30 a.m. or after 7:30 p.m. on weekdays, and before 8:00 a.m. or after 5:00 p.m. on Saturdays, and at any time on Sundays and/or legal holidays (New Years' Day (as observed by the city), Memorial Day, Independence Day (as observed by the city), Labor Day, Thanksgiving Day and Christmas Day (as observed by the city)).

Secs. 38-94—38-117. - Reserved.

SECTION II: It is the intention of the City Council and it is hereby ordained by the authority of the City Council that the provisions of this Ordinance shall become and be made a part of The Code of the City of

Sandy Springs, Georgia, and the codifier is authorized to make the specified deletions, insertions, additions, and to insert headings, article numbers and section numbers as and where appropriate.

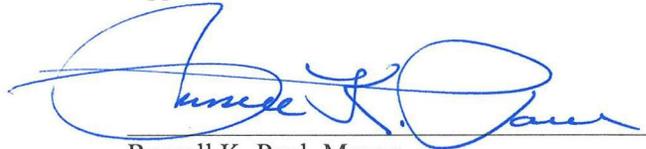
SECTION III: All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION IV: If any section, subsection, provisions, 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 of the City Council that this Ordinance would have been adopted in its current form without the invalid or unconstitutional provision contained therein.

SECTION V: This Ordinance shall become effective immediately upon its adoption.

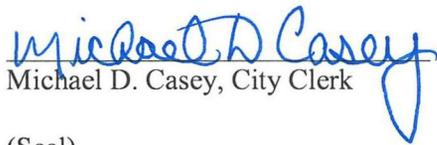
APPROVED AND ADOPTED this the 7th day of August, 2018.

Approved:



Russell K. Paul, Mayor

Attest:



Michael D. Casey, City Clerk

(Seal)

