

DIVISION 3. NOISE

Sec. 34.086. Definitions.

In this division:

Party means a planned or unplanned gathering of people.

Property manager means a person, other than an owner or tenant, who leases, maintains, or cares for real property owned by another. The term includes managers and assistant managers of apartment complexes and owners or employees of property management companies.

Residence means a dwelling unit in an apartment, townhouse, duplex or other multi-family residential structure, or a single-family residence. Residence includes the entire premises of a residence, including the residence building, garage, carport, driveway and yard, and adjacent common areas, parking areas, sidewalks and streets insofar as the activity in common areas is a continuation of activities inside the residence.

Residential area means an area:

- (1) That is within a residential zoning district, or
- (2) Within which, in a one-block area, a majority of the buildings are designed or used for residential purposes, such as one-family or two-family dwellings, apartments, townhomes and condominiums.

Verified noise complaint means a complaint of excessive noise at a residence that is verified by personal observation of a police officer to constitute a violation of a state law or of any provision of this Code.

(Ord. No. 2002-24; §1, 3-25-02)

Sec. 34.087. Noise from motor vehicles.

(a) It is unlawful for any person operating or controlling a motor vehicle to operate any radio, stereo receiver, compact disc player, cassette tape player, or other similar device in the motor vehicle in such a manner that, when operated, it is;

- (1) audible in a public place or on private property

other than that owned or occupied by the person at a distance of 30 feet or more from the vehicle, or

(2) causes vibration that can be felt at a distance of 30 feet or more from the vehicle.

(b) It shall be a defense to prosecution under this section that a vehicle was owned and operated by a business that, in the required and normal course of business, uses sound making devices in a motor vehicle, and the sound or vibration was being made between 8:00 a.m. and 9:00 p.m.

(Ord. 2002-24; §1, 3-25-02)

Sec. 34.088. Excessive Noise Violations; penalties.

a. It is unlawful for a person who owns, occupies, or acts as a property manager for a residence or is present at any residence to cause, make, or allow excessive noise to be made there if it can be heard across property lines or enters another residence. Factors to be used in determining whether noise is excessive shall include but need not be limited to: the time of day; the size of any gathering of persons making or contributing to the noise; the use of noise amplification equipment; the magnitude or disruptive effect of the noise; the duration of the noise; or whether the noise would tend to cause distress, discomfort, annoyance, or injury to a person of ordinary sensibility. Sources of excessive noise may include but are not limited to live or recorded human voices or sounds produced by radio, stereo, television, musical instruments or other devices.

b. An excessive noise violation shall be punished, upon conviction, by a fine not to exceed \$500 as provided in Section 1.015(b) of the San Marcos City Code.

(Ord. 2002-24; §1, 3-25-02; Ord. 2009-21; §1, 4-7-09)

Sec. 34.089. Notification.

(a) The police department, may notify the property owner or property manager, in writing if two verified excessive noise complaints, host or guest responsibility violations, or unruly violations occur on the property within a sixty (60) day period.

(b) After notification under subsection (a), the property owner, property owner's designee or the property manager shall contact the police department within ten (10) days of the date

of the notice in order to reach agreement on strategies to prevent further violations from occurring on the property which may include education, mediation, enforcement of lease violations against tenants, refusal to renew the lease of particular tenants or eviction. If an agreement is reached, the matter will be deemed resolved unless there is another verified excessive noise complaint, host or guest responsibility violation, or unruly gathering within 90 days of the most recent complaint or violation. If an agreement includes non-renewal of the lease or eviction, there will be no charge for police responses to the property if the lease termination or eviction occurs within 60 days of the date of the execution of the agreement.

If an agreement is not reached or if a citation is issued for an excessive noise violation, host or guest responsibility violation, or unruly gathering violation within 90 days of the most recent complaint, citation, or violation, then the property owner or property manager may be assessed a fee of \$100 for each of the two prior police responses and each subsequent police response to the property for such verified complaints and violations within six months from the date of the last verified complaint or violation.

(Ord. 2002-24; §1, 3-25-05; Ord. 2009-21, §2, 4-7-09)

Previous Sec. 34.090-34.096. Repealed (Ord. 2009-21, §2, 4-7-09)

Sec. 34.90. Suspension of electric service.

(a) If a police officer determines that a party in a residential area constitutes an imminent threat to public safety, the officer may cause electric service at the location of the party to be discontinued.

(1) An imminent threat to public safety includes, without limitation:

- (a) blocking streets in such a way that emergency vehicles cannot access the streets,
- (b) violation of alcohol or drug laws by persons attending the party,
- (c) emergency calls from the area to which the police cannot respond due to the party,

- (d) an ongoing breach of the peace, or
- (e) inability of the police to conduct an investigation due to the nature or circumstances of the party.

(b) Before an officer causes the discontinuation of the electric service to a residence, the officer will give a verbal warning to the occupants of the residence that if they do not comply with the officer's lawful orders, the electric service will be discontinued.

(c) After the verbal warning, if the persons at the residence continue to disregard the officer's lawful orders, the officer may temporarily disconnect the electric service at the residence's breaker. If the occupants then obey the police officer and the officer is able to bring the situation under control, then the officer will reconnect the electric service. If the occupants continue to disregard the officer's lawful orders after this temporary disconnect, then the officer may request that the electric utility department disconnect the electricity at the meter.

(d) If the electricity is disconnected at the meter, then reconnection fees and procedures are identical to those established in the city's electric utility tariffs.

(e) It is unlawful for anyone other than a police officer or an electric utility employee to reconnect electric service after a police officer has caused it to be discontinued.

(Ord. No. 2002-24; §1, 3-25-02; Ord. 2009-21, §2, 4-7-09)

Sec. 34.091. Fees.

The fee authorized in section 34.0094 is \$100.00.

(Ord. No. 2002-24, §2, 3-25-02)

Sec. 34.092-34.099. Reserved.

ARTICLE 6. HOST RESPONSIBILITIES OF PARTIES IN RESIDENTIAL AREAS.

Sec. 34.701. Definitions.

In this article:

Apartment complex means a multi-family development containing one or more buildings that have at least four dwelling units.

Excessive noise means noise that can be heard across property lines or enters a residence other than the residence from which the noise originated. Factors to be used in determining whether noise is excessive shall include but need not be limited to; the time of day; the size of any gathering of persons making or contributing to the noise; the use of noise amplification equipment; the magnitude or disruptive effect of the noise; the duration of the noise; or whether the noise would tend to cause distress, discomfort, annoyance, or injury to a person of ordinary sensibility. Sources of excessive noise may include but are not limited to live or recorded human voices or sounds produced by radio, stereo, television, musical instruments or other devices.

Guest means any person who attends a party other than the host, whether invited or not.

Host means a person who invites or allows others to gather or remain at his residence, or at a residence he has a lawful right to occupy, for a party.

Party means a planned or unplanned gathering of people.

Residence means a dwelling unit in an apartment, townhouse, duplex or other multi-family residential structure, or a single-family residence. Residence include the entire premises of a residence, including the residence building, garage, carport, driveway and yard, and adjacent common areas, parking areas, sidewalks and streets.

Residential area means an area:

- (1) That is within a residential zoning district; or
- (1) Within which, in a one-block area, a majority of the buildings are designed or used for residential purposes, such as one-family or two-family dwellings, apartments, townhomes and condominiums.

Unruly gathering means a gathering of more than one person which is conducted on premises within the city and which, by reason of

the conduct of those persons in attendance, results in the occurrence of more than one of the following conditions or events on public or private property; rioting; the unlawful sale, furnishing, possession or consumption of alcoholic beverages; the destruction of property; obstruction of roadways, driveways, or public ways by crowds or vehicles; excessive noise; disturbances, brawls, fights, or quarrels; public urination or defecation; or indecent or obscene conduct or exposure.

(Ord. 2002-23; §1, 3-25-02; Ord. 2003-29, §1, 5-28-03; Ord. 2009-21, §2, 4-07-09)

Sec. 34.702. Responsibilities of hosts, guests, owners or managers of common areas at apartment complexes.

(a) It is unlawful for a host to fail:

(1) To ensure that excessive noise is not produced from the host's party.

(2) to ensure that any alcoholic beverages provided or served at the host's party are controlled in a manner that ensures the alcoholic beverage laws are not violated.

(3)to advise his guests that streets and driveways cannot be blocked by vehicles of persons attending the host's party;

(4)to ensure that litter related to the host's party is properly disposed of by 10 a.m. of the morning after the party started; or

(5)To prevent the party from becoming an unruly gathering.

(b)It is unlawful for a guest attending a party to engage in conduct that results in one or more of the following conditions or events on public or private property; rioting; the unlawful sale, furnishing, possession or consumption of alcoholic beverages; the destruction of property; obstruction of roadways, driveways, or public ways by crowds or vehicles; excessive noise; disturbances, brawls, fights, or quarrels; public urination or defecation; or indecent or obscene conduct or exposure.

(c) It is unlawful for the owner or manager of an apartment complex to knowingly allow an unruly gathering to occur or continue in a common area.

(d) It is not a defense to prosecution for violations of any law or ordinance that a security officer or officers who were hired for a party failed to properly fulfill the host's duties in subsection (a) of this section.

(e) it is prima facie evidence that the host violated subsection (a)(3) if the police warn the host that vehicles of persons attending the host's party are blocking streets and driveways and that these vehicles need to be moved, and the vehicles are not moved within a reasonable time.

(f) If a police officer determines that a party has become an unruly gathering, the officer may order all persons not residing at the site of the party to leave immediately. Any person who fails or refuses to abide by such an order commits an offense.

(g) A violation of any provision of subsection (a), (b), (c) or (f) of this section shall be punished, upon conviction, by a fine not to exceed \$500.00 as provided by Section 1.015(b) of the San Marcos City Code.

(Ord. No. 2002-23; §1, 3-4-02; Ord. 2003-29, §1, 5-28-03; Ord. 2009-21, §3, 4-7-09)

Sec. 34.703. Enforcement of other laws.

Nothing in this division affects a peace officer's authority to enforce other laws such as disorderly conduct, littering, parking and alcohol-related offenses against persons who violate those laws.

(Ord. No. 2002-23; §1, 3-4-02)