

AN ORDINANCE TO PROTECT, PRESERVE AND PROMOTE THE HEALTH, SAFETY, WELFARE OF AND PEACE AND QUIET FOR THE CITIZENS OF THE CITY OF WAVELAND THROUGH THE REDUCTION, CONTROL AND PREVENTION OF EXCESSIVE NOISE

WHEREAS, The creation of excessive noise and sound within the city limits of Waveland is a detriment to the public health, safety, welfare and the quality of life of the citizens of Waveland; and

WHEREAS, the citizens of the City have the right to an environment free from excessive noise and sound that may jeopardize their health, safety and welfare or degrade their quality of life; and

WHEREAS, it is therefore the policy of the City of Waveland to prevent excessive noise and sound in order to preserve, protect and promote the health, safety and welfare and the quality of life of its citizens.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF WAVELAND that in the interest of protecting, preserving and promoting the health, safety and welfare of and peace and quiet for the citizens of Waveland, the City of Waveland hereby adopts the following ordinance.

Section 1. Repeal. Ordinance # 340 is hereby repealed in its entirety.

Section 2. Definitions. For purposes of this Ordinance, the following words, terms, and phrases shall have the following meanings:

- A. "*Construction*" means any site preparation, assembly, erection, substantial repairs, alterations, or similar action, for or on public or private rights-of-way, structures, utilities, or similar property.
- B. "*Decibel*" means logarithmic (dimensionless) measure used in describing the amplitude of sound.
- C. "*Emergency*" means any occurrence or set of circumstances involving actual or eminent physical trauma or property damage which demands immediate action.
- D. "*Emergency vehicle*" means authorized publicly or privately owned ambulances, or motor vehicles belonging to a fire or police department, or to any federal, state, county, or municipal agency provided said vehicles are in use as emergency vehicles by one authorized to use said vehicles for that purpose.
- E. "*Emergency work*" means the use of any machinery, equipment, vehicle, manpower, or other activity in an effort to protect, maintain, provide, or restore safe conditions in the community or for the citizenry, or work by private or public utilities when restoring utility service.
- F. "*Hospital*" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment and care of individuals suffering from physical or mental infirmity, illness, disease, injury or deformity, whether or not any such place be organized or operated for profit and whether any such place be publicly or privately owned. Without limitation, "hospital" does not include convalescent or boarding homes, homes for the aged or other like establishments where room and board only are provided, nor does it include offices or clinics where patients are not regularly kept as bed patients or where out-patient care is primarily only provided.
- G. "*Motor vehicle*" means any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, buses, street cars, trucks, truck-trailers, semi-trailers, campers, go-carts, amphibious craft on land, dune buggies, or racing vehicles, but not including motorcycles.
- H. "*Motorboat*" means any vessel which operates on water and which is

- propelled by a motor, including, but not limited to, boats, barges, amphibious craft, water skis, towing devices, jet skis, bumper boats, and hover craft, but not including racing boats.
- I. *"Motorcycle "* means an unenclosed motored-vehicle having a saddle for the use of the operator and two (2) or more wheels in contact with the ground, including, but not limited to, motor scooters and mini-bikes.
- J. *"Noise "* means any sound which annoys or disturbs or which causes or tends to cause adverse psychological or physiological effects on humans.
- K. *"Nursing home"* has the same definition and meaning as defined in Miss. Code Ann. 73-17-5(6) (1972), as amended.
- L. *"Person"* means any individual, firm, association, partnership, corporation, joint venture, or any entity, public or private in nature.
- M. *"Plainly audible "* means any sound that can be detected by a person using his or her unaided hearing faculties. As an example, if the sound source under investigation is music amplified by sound equipment, the enforcement officer need not determine the title of a song, specific words, or the artist performing the song. The detection of the rhythmic base component of the music is sufficient to constitute a plainly audible sound.
- N. *"Powered Model Vehicle"* means a self-propelled airborne, waterborne or landborne plane, vessel or vehicle, which is not designed to carry persons, including, but not limited to, any model airplane, boat, car or rocket.
- O. *"Property boundary or property line"* means an imaginary line at the ground surface and its vertical extension which separates the real property owned or inhabited by one person from that owned or inhabited by another person, but not including intra-building real property divisions.
- P. *"Public right-of-way "* means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by a governmental entity.
- Q. *"Racing boats "* means any power boat, or any aquaplane or similar power-driven water craft designed for racing; or any other power boat or water craft designed for high speeds that is not effectively muffled to prevent exhaust noise, or that uses cut-outs.
- R. *"Residence or residential area"* means a single-family, duplex, or multifamily dwelling or an area having such dwellings.
- S. *"Sound"* shall mean any of the following: i. the particular auditory effect produced by a given cause; ii. any auditory effect; iii. any vibrational disturbance; or iv. a noise, vocal utterance, musical tone or the like. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.
- T. *"Sound equipment"* means any equipment, machine, or device used for the production, reproduction or amplification of the human voice, music, or any other sound, including, but not limited to, radios, television sets, phonographs, drums, boom boxes, compact disc (or CD) players, musical instruments, cassette tape players or similar devices.
- U. *"Sound Level Meter"* An instrument used for acoustic measurement which is sensitive to minute pressure fluctuations.

Section 3. Noises interfering with enjoyment of property or public peace and comfort prohibited. No person shall make or cause to be made in the City any loud and raucous noise, which: offends the ordinary sensibilities of the inhabitants of the City; renders the enjoyment of life or property uncomfortable; or interferes with public peace and comfort.

Section 4. Specific noises interfering with enjoyment of property or public peace and

comfort enumerated.

- A. A reasonable guideline to determine whether a sound is loud and raucous noise in violation of this ordinance is that to be so determined, a sound should be either: plainly audible to a person at a distance in excess of one hundred (100) feet from the origin of the sound; or unreasonably loud, jarring, disturbing or a nuisance to persons within said one hundred (100) feet of audibility; or if it is determined by a Waveland Police Officer using a decibel meter where a noise is created which the measurement of said noise exceeds 85 decibels from two hundred (200) feet from the origin of the sound. This ordinance does not require decibel measurements in all cases for there to be a finding of loud and raucous noise.
- B. Any of the following acts, among others, are declared to create loud and raucous noises if they offend the ordinary sensibilities of the inhabitants of the City, render the enjoyment of life or property uncomfortable, or interfere with public peace and comfort as outlined in Section 3, supra. The following enumeration shall not be deemed to be exclusive.
- i. The repeated or sustained sounding of any horn or signal device on any motor vehicle, motorcycle, or motor boat, except as a danger signal, as required by state law.
 - ii. The playing or operation of any sound equipment in such a manner, or with such volume as to disturb the peace, quiet, comfort, or repose of persons in any dwelling, apartment, hotel, or other type of residence.
 - iii. The keeping of any fowl or animal which emits or makes a long-continued, loud and raucous noise.
 - iv. The use of any motor vehicle, motorcycle, or motorboat so out of repair that it emits or creates loud, raucous, or rattling noises.
 - v. The repeated or sustained blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of danger.
 - vi. The discharge into the open air of the exhaust of any stationary steam engine, stationary internal combustion engine, or motor boat engine, except through a muffler, or other device which will effectively and efficiently prevent loud and raucous noises.
 - vii. The discharge into the open air of the exhaust from any motor vehicle, motorcycle, or motorboat, except through a muffler, or other device, which will effectively and efficiently prevent loud and raucous noises.
 - viii. The construction, including excavation, demolition, alteration, or repair of any structure or building in or adjacent to a residential area other than between the hours of 7:00 a.m. and 9:00 p.m. on weekdays, except in the case of urgent necessity in the interest of public safety, for which a permit must be obtained from the chief of police in accordance with subsection (h) herein.
 - ix. The creation of loud and raucous noise on any street or property adjacent to any hospital, or adjacent to any school, church, public library, or court which is in session; provided, that a conspicuous sign is located in or near such street or property indicating or designating that whatever the establishment or building at issue, be it a hospital, school, church, public library, or court, is adjacent thereto.
 - x. The shouting and crying of peddlers, hawkers, and vendors which disturbs the quiet and peace of the neighborhood.
 - xi. The use of any drum or other musical instrument or sound equipment including Disk Jockeys and Live Bands with 1 or more members for outdoor entertainment for the purpose of attracting attention by the creation of noise, to any performance, show, sale, or display of merchandise as to attract customers to

any place of business between the hours as follows:

- a. 10:00 PM and 7:00 AM on the weekdays of Sunday Through Wednesday
- b. 12:00 AM and 7:00 AM Friday mornings
- c. 2:00 AM and 7:00 AM Saturday and Sunday mornings

Special permit exemptions and holiday exemptions apply

xii. The use of mechanical loudspeakers or sound equipment on or in motor vehicles or motorcycles for the purpose of advertising any show, sale, or display of merchandise.

xiii. The use upon a motor vehicle, motorcycle, or motorboat any bell, siren, compression or exhaust whistle, except that motor vehicles, motorcycles, and motorboats operated in the performance of any emergency work or in the performance of any duty by law enforcement officers, fire department, and ambulances may attach and use a bell, siren, compression or exhaust whistle.

xiv. The use of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, leaf blower, or similar device used outdoors in residential areas or areas immediately adjacent thereto between 9:00 p.m. and 7:00 a.m.

xv. The operation of a powered model vehicle or vehicle so as to create a noise disturbance across a residential real property boundary in any residential area at any time, or in a public space between the hours of 9:00 p.m. and 7:00 a.m.

- C. Whenever a violation of Subsection B. xii. of this Section occurs, in addition to the operator of the motor vehicle or motorcycle at the time of the violation, the registered owner of the motor vehicle or motorcycle may also be considered to be in violation of the ordinance, either personally or through an agent or employee. Proof of ownership may be made by a computer generated record of the registration of the vehicle with the Mississippi Department of Motor Vehicles showing the name of the person to whom the state license plates were issued. This proof is prima facie evidence of the ownership of the motor vehicle or motorcycle by the person to whom the certificate of registration was issued.

Section 5. Sound Equipment operated in public places. A person commits an offense of this Ordinance if he or she operates or causes to be operated any sound equipment in a public place upon any public place, park, or playground or upon any public right-of-way, sidewalk, street, alley, or highway of the City in violation of any of the following limitations and requirements:

A. Sound equipment may not emit loud and raucous noises so as to interfere with the enjoyment of life or property or to interfere with public peace and comfort.

B. Sound equipment must be operated so as not to cause traffic congestion or the congregating of crowds that obstruct any public sidewalk, street, alley, or highway.

C. If conduct that would otherwise violate this Ordinance consists of speech or other communication, or gathering with others to hear or observe such speech or communication, or gathering with others to picket or otherwise express in nonviolent manner a position on social, economic, political, or religious questions, the person must be ordered and provided an opportunity to move, disperse, or otherwise remedy the violation prior to arrest or citation.

D. The order required by Subsection C of this Section may be given by a peace or police officer, a firefighter, a person with authority to control the use of the premises.

E. It is a defense to prosecution under this Section that:

i.i.i. In circumstances in which this section requires an order, no order was given

i.i.ii. An order, if given, was manifestly unreasonable in scope;

i.i.iii. An order, if given, was promptly obeyed;

iv. The sound equipment was operated in a public place, within an enclosed

structure, and was not audible beyond the property line of the premises on which it was located; The person operating the sound equipment was a law enforcement officer or member of the fire department in the performance and scope of official duties;

- i.i.vi. The sound equipment was operated for the purpose of alerting persons to the existence of an emergency or danger; or
- vii. The sound equipment was operated in the performance of emergency work necessary to restore public utilities, to restore property to a safe condition, or to protect persons or property from imminent danger, following a fire, accident, or natural disaster.

Section 6. Exemptions. The following are exempt from the provisions of this Ordinance:

- A. The operation of domestic power tools, lawn mowers, and agricultural equipment between the hours of 7:00 a.m. and 9:00 p.m.;
- B. Noises or sounds resulting from any authorized emergency vehicles when responding to an emergency;
- C. Safety signals and alarm devices, storm warning sirens or horns, and the authorized testing of such equipment;
- D. Noises or sounds made during a parade or concert sponsored by the city, or for which a permit has been granted by the city;
- E. Noises or sounds resulting from activities of a temporary duration, for which a special permit or variance has been granted pursuant to this section, and which conforms to the conditions and limits stated thereon;
- F. Noises or sounds from church bells and chimes;
- G. Noises from construction and demolition activities for which a building permit has been issued by the city are exempt from this section between the hours of 7:00 a.m. and 9:00 p.m., provided that mufflers on construction equipment shall be maintained;
- H. Interstate railway locomotives and motor vehicles, aircraft, trucks, or other motor vehicles in interstate commerce, or those which are in all respects operated in accordance with or pursuant to applicable federal laws or regulations;
- I. Installation and maintenance of public and private utilities;.
- J. Mosquito control operations;
- K. Public or private school functions which occur on the property of the school;
- L. Federal, state, or local governmental event, festival, fun run, race, fiesta, or concert sponsored, co-sponsored, or permitted by a governmental agency or any agent of the same in the fulfillment of any official duty or activity sanctioned by or on behalf of the governmental agency or entity;
- M. Any residential or vehicular burglar alarm or security device, provided, however, no such alarm or device shall sound on a frequent and long-continued basis;
- N. The emission of any sound which was created or produced for the purpose of alerting a person to the existence of an emergency, or danger, which sound is produced by an authorized emergency vehicle or by emergency work necessary to restore public utilities, or to restore property to a safe condition, or to protect person or property from imminent danger following a fire, accident, or natural disaster;.
- O. Any aircraft operated in conformity with, or pursuant to, a federal law, federal air regulations, and air traffic control instructions and pursuant to and within the duly

adopted federal air regulations. Any aircraft operating under technical difficulties in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of any emergency under federal air regulations is also exempt;

P. Noises or sounds resulting from public fireworks displays approved by the City of Waveland pursuant to City of Waveland Ordinance No. 296 in celebration of an official holiday; and

Q. Noises or sounds resulting from the lawful operation of racing boats in a race officially sanctioned by the United States Coast Guard and the Bureau of Marine Resources (BMR) of the State of Mississippi (or other commission or agency of the state in lieu of BMR properly empowered to authorize and regulate the event).

Section 7. Variances and permits.

A. Any person desiring relief from any provision of this article shall apply for a special variance or permit to be made in writing to the chief of police. Payment of a fee of fifty dollars (\$50.00) shall accompany the application. The said chief of police shall have the authority, consistent with this subsection, to grant special variances and permits upon written application only upon a good and sufficient showing that:

- i. The activity, operation, noise source, or offending noise will be of short duration and cannot be done in a manner that would comply with this section; or
- ii. The applicant needs additional time to modify equipment or take other action in order to comply with the provisions of this section.

B. An application for a variance or permit shall be approved or denied within five (5) days after receipt by the chief of police. If approved, the variance or permit shall contain a specific time limit on the permitted activity or noise and said variance or permit shall immediately terminate at the expiration of that time limit, which is not to exceed fifteen (15) consecutive days. If an application is denied, the chief of police must state with specificity the reasons why the proposed variance or permit does not meet the criteria outlined in this section. The applicant may appeal the decision to the Board of Mayor and Aldermen. Any such appeal shall be taken by submitting a written notice of request of appeal with the city clerk no more than ten (10) days from denial of a permit or variance. Such notice of request of appeal must contain the full name and address of the person making the appeal and an account of the reasons for the appeal and the decision being appealed from.

C. The following factors shall be considered, in the initial investigation, in order to determine whether granting the variance or permit will result in a condition injurious to health or safety of the general public of the City of Waveland:

- i. Distance of proposed activities from a residential area or zone;
- ii. Number of sound amplification equipment or devices;
- iii. Anticipated direction of sound amplification equipment or devices;
- iv. Anticipated duration of proposed activities;
- v. Whether the activity will be held within or outside of a structure;
- vi. The time of day or night the noise or sound will occur; and
- vii. Any other consideration deemed necessary by the chief of police.

D. Any permit or variance granted pursuant to this section shall contain thereon, in addition to any other requirements set out herein, all conditions upon which such permit or variance has been granted, including, but not limited to, the effective date, time of day, location, including, but not limited to, the proximity of the activity or noise to residential areas, schools, churches, hospitals, nursing homes, or public libraries, sound level limit, if any, or equipment limitation.

E. Variances and permits that are granted by the police chief under this subsection must be displayed and available for review by police officers or other designated governmental officials upon request.

F. Issued variances and permits will be surrendered to any city police officer or other designated official upon request when the variance/permit has expired or the restrictions thereon have been violated.

G. The chief of police shall have the authority to revoke any permit or variance issued on the finding of any of the following:

- i. That the activity is being conducted in a manner inconsistent with the variance or permit, including the description of the activity as set out in the application.
- ii. That there is any misrepresentation of the activity on the application for the variance or permit.
- iii. That the activity is causing an unreasonable disturbance of the peace of families or persons within the area into which the noise or sound carries.

Section 8. Orders, Violations, Penalties and Remedies.

A. Except as otherwise required by Subsection 6.C., in lieu of issuing a citation for a violation of this ordinance, a City law enforcement officer may issue an order requiring the immediate abatement of any source of sound in violation of this ordinance.

B. If the person responsible for an activity on private property, which violates this Ordinance cannot be determined, the owner, lessee or occupant of the property on which the activity is located shall be deemed responsible for the violation.

C. Any person found guilty of violating the provisions of this Ordinance shall be guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000.00), or by imprisonment not to exceed ninety (90) days, or both such fine and imprisonment.

D. Each violation of this Ordinance shall constitute a separate offense regardless of the time frame in which such violation occurs, provided, however, that no two citations shall be issued within fifteen (15) minutes.

E. As an additional remedy, violations of this Ordinance are deemed and declared to be a nuisance, and the operation or maintenance of any business, device, instrument, vehicle, or machinery in violation of any provision of this Ordinance, or which operation or maintenance exceeds the limitations of this Ordinance, may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

Section 9. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

This Ordinance shall become effective thirty-(30) days after its passage. **UPON MOTION** of Alderman Lafontaine, seconded by Alderman Richardson the aforesaid Ordinance was put to a roll call vote with the Aldermen voting as follows:

Voting Yay: Richardson and Lafontaine

Voting Nay: Burke

Absent: Piazza

PASSED AND APPROVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF WAVELAND, HANCOCK COUNTY, MISSISSIPPI on the 16 th day of November, 2016.

Mike Smith, Mayor

Lisa Planchard, City Clerk

City of Waveland