

## **ARTICLE V. NOISE<sup>1</sup>**

### **Sec. 22-172. Definitions.**

The following words, terms and phrases, when used in this article, 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 level in decibels, reported as measured by a sound level measuring instrument having an "A"-weighting network which discriminates against the lower frequencies according to a relationship approximating the auditory sensitivity of the human ear. The level so read is designated dB(A).

*Construction* means any site preparation, assembly, erection, substantial repairs, alterations, or similar action, for or on public or private property, rights-of-way, structures, utilities, or similar property.

*Decibel* means logarithmic (dimensionless) measure used in describing the amplitude of sound.

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

*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.

*Emergency work* means the use of any machinery, equipment, vehicle, manpower, or other activity 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.

*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.

*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.

*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.

*Motorcycle* means an unenclosed motored-vehicle having a saddle for the use of the operator and two or more wheels in contact with the ground, including, but not limited to, motor scooters and mini-bikes.

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

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<sup>1</sup>State law reference(s)—Authority to preserve peace and good order generally, MCA 1972, § 21-19-15.

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*Nursing home* has the same definition and meaning as defined in Miss. Code Ann. 73-17-5(6) (1972), as amended.

*Person* means any individual, firm, association, partnership, corporation, joint venture, or any entity, public or private in nature.

*Powered model vehicle* means a self-propelled airborne, waterborne or land borne plane, vessel, or vehicle, which is not designed to carry persons, including, but not limited to, any model airplane, boat, car or rocket.

*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.

*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.

*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.

*Residence or residential area* means a single-family, duplex, or multifamily dwelling or an area having such dwellings.

*Short duration* means four hours or less.

*Sound* means 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.

*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.

*Sound level meter* means an instrument used for acoustic measurement which is sensitive to minute pressure fluctuation.

(Ord. No. 612-04-2017, § II, 4-4-2017)

## **Sec. 22-173. 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:

- (1) Offends the ordinary sensibilities of the inhabitants of the city;
- (2) Renders the enjoyment of life or property uncomfortable;
- (3) Interferes with public peace and comfort; or
- (4) Contains or utilizes obscene, vulgar, lewd or offensive language which is produced, reproduced, or amplified by sound equipment.

(Ord. No. 612-04-2017, § III, 4-4-2017)

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**Sec. 22-174. Specific noises interfering with enjoyment of property or public peace and comfort enumerated.**

- (a) A sound from any source not exempted or otherwise regulated by this article and which, is loud and raucous noise in violation of this article when it is registered on a decibel meter by a police officer using a calibrated sound level meter at the complainant's property line and exceeds the dB(A) established for the time-period and zones listed below in Table 1:

**Table 1: Times and dB(A) Sound Level Limit**

<i>Residential Zone:</i>	
<i>Times</i>	<i>Levels</i>
7:01 a.m.—10:00 p.m.	65dB(A)
10:01 p.m.—7:00 a.m.	55dB(A)
<i>Industrial Zone/Commercial Zone:*</i>	
<i>Times</i>	<i>Levels</i>
7:01 a.m.—10:00 p.m.	85dB(A)
10:01 p.m.—7:00 a.m.	75dB(A)

\*Any commercial/industrial property within 50 feet of a residential property or area will be required to adhere to the residential requirements set forth in Table 1.

- (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 this section. The following enumeration shall not be deemed to be exclusive:
- (1) 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.
  - (2) 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.
  - (3) The keeping of any fowl or animal which emits or makes a long-continued, loud and raucous noise.
  - (4) The use of any motor vehicle, motorcycle, or motorboat so out of repair or malfunction that it emits or creates loud, raucous, or rattling noises.
  - (5) 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.
  - (6) 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.
  - (7) 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.
  - (8) 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

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weekdays, except in the case of urgent necessity in the interest of public safety, for which a permit must be obtained from the city.

- (9) 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.
  - (10) The use of any drum or other musical instrument or sound including disc jockeys and live bands with one 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 or entertainment venue after 10:00 p.m. unless prior approval of a time variance has been granted as outlined in section 22-177.
  - (11) 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.
  - (12) 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.
  - (13) 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.
  - (14) 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)(7) 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.

(Ord. No. 612-04-2017, § IV, 4-4-2017)

## **Sec. 22-175. Sound equipment operated in public places.**

A person commits an offense of this article if he 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:

- (1) Sound equipment may not emit loud and raucous noises to interfere with the enjoyment of life or property or to interfere with public peace and comfort.
- (2) 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.
- (3) If conduct that would otherwise violate this article 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

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questions, the person must be ordered and provided an opportunity to move, disperse, or otherwise remedy the violation prior to an arrest or citation.

- (4) The order required by subsection (3) of this section may be given by a peace officer, police officer, a firefighter, or a person with authority to control the use of the premises.
- (5) It is a defense to prosecution under this section that:
  - a. In circumstances in which this section requires an order, no order was given;
  - b. An order, if given, was manifestly unreasonable in scope; an order, if given, was promptly obeyed;
  - c. 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;
  - d. 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;
  - e. The sound equipment was operated for the purpose of alerting persons to the existence of an emergency or danger; or
  - f. 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.

(Ord. No. 612-04-2017, § V, 4-4-2017)

## **Sec. 22-176. Exemptions.**

The following are exempt from the provisions of this article:

- (1) The operation of domestic power tools, lawn mowers, and agricultural equipment between the hours of 6:00 a.m. and 9:00 p.m.
- (2) Noises or sounds resulting from any authorized emergency vehicles when responding to an emergency;
- (3) Safety signals and alarm devices, storm warning sirens or horns, and the authorized testing of such equipment;
- (4) Noises or sounds made during a parade or concert sponsored by the city, or for which the city has granted a permit;
- (5) Noises or sounds resulting from activities of a temporary duration, for which the city has granted a special permit or variance pursuant to this article, and which conforms to the conditions and limits stated thereon;
- (6) Noises or sounds from church bells and chimes;
- (7) Noises from construction and demolition activities for which the city has issued a building permit are exempt from this section between the hours of 6:00 a.m. and 9:00 p.m., provided that mufflers on construction equipment shall be maintained;
- (8) 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;
- (9) Installation and maintenance of public and private utilities;
- (10) Mosquito control operations;

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- (11) Public or private school functions which occur on the property of the school;
  - (12) Church functions which occur on the property of the church;
  - (13) 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;
  - (14) 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;
  - (15) The emission of any sound which was created or produced for 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;
  - (16) 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 after the declaration of any emergency under federal air regulations is also exempt;
  - (17) Noises or sounds resulting from public fireworks displays approved by the city pursuant to city ordinance in celebration of an official holiday;
  - (18) Noises or sounds resulting from the lawful operation of racing boats in a race officially sanctioned by the United States Coast Guard and the Department of Marine Resources (DMR) 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).

(Ord. No. 612-04-2017, § VI, 4-4-2017)

## **Sec. 22-177. Variances and permits.**

- (a) Any person desiring relief from any provision of this article shall file an application for a special variance and permit with the city through the office of the mayor. Payment of a fee of \$50.00 shall accompany the application. The said mayor 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:
  - (1) 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 article; or
  - (2) The applicant needs additional time up to a maximum of 60 days to modify equipment or take other action to comply with the provisions of this section.
- (b) An application for a variance or permit shall be submitted at least 30 days prior to the event and will be approved or denied within 15 business days of receipt of the application. 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. If an application is denied, the city must state with specificity the reasons why the proposed variance or permit does not meet the criteria outlined in this section.
- (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:
  - (1) Distance of proposed activities from a residential area or zone;

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- (2) Number of sound amplification equipment or devices;
  - (3) Anticipated direction of sound amplification equipment or devices, with consideration given to requiring sound amplification equipment and devices being directed away from residential zones;
  - (4) Anticipated duration of proposed activities;
  - (5) Whether the activity will be held within or outside of a structure;
  - (6) The time of day or night the noise or sound will occur; and
  - (7) Any other consideration deemed necessary by the chief of police or shift supervisor.
- (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, duration, 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 city under this subsection must be displayed by the applicant during the event and available for review by police officers or other designated governmental officials upon request.
  - (f) Issued variances and permits will be surrendered to any 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 or police shift supervisor shall have the authority to revoke any permit or variance issued on the finding of any of the following:
    - (1) 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.
    - (2) That there is any misrepresentation of the activity on the application for the variance or permit.
    - (3) That the activity is causing a disturbance of the peace of families or persons within the area into which the noise or sound carries.
    - (4) That there exists a potential danger to the health, safety and/or welfare of the public.

(Ord. No. 612-04-2017, § VII, 4-4-2017)

## **Sec. 22-178. Orders, violations, penalties and remedies.**

- (a) If the person responsible for an activity on private property, which violates this article cannot be determined, the owner, lessee or occupant of the property on which the activity is located shall be deemed responsible for the violation.
- (b) Upon the report of any violation to the police department, the alleged offender will be given a verbal warning. After a verbal warning, the next violation will result in a citation.
- (c) Any person found guilty in a court of law of violating the provisions of this article shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$1,000.00, or by imprisonment not to exceed 90 days, or both such fine and imprisonment.
- (d) Each violation of this article 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 15 minutes.
- (e) As an additional remedy, violations of this article 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

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provision of this article, or which operation or maintenance exceeds the limitations of this article, maybe subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

(Ord. No. 612-04-2017, § VIII, 4-4-2017)

**Sec. 22-179. Amplified sound from portable devices.**

- (a) It shall be unlawful for any person to operate, or cause to be so operated, or to assist in operating, any sound amplification system, or any instrument that produces, or to otherwise produce or reproduce, any loud, or excessive, and raucous sounds, or sounds which rumble or otherwise sound disagreeable or disturbing, which system is within any vehicle or portable, mobile, or otherwise carried, in any street, park, parking lot, or other place accessible to the public, and which sounds can be heard from a distance of 50 or more feet from the vehicle or device.
- (b) Violations of this article are punishable by a fine not exceeding \$1,000.00 or by imprisonment not exceeding 90 days, or both. Every day any such violation shall continue shall constitute a separate offense.

(Ord. No. 381, §§ 1, 2, 10-22-1996)

**Secs. 22-180—22-200. Reserved.**