

ORDINANCE NO. 2012-256

AN ORDINANCE REPEALING SECTIONS 12-5 AND 12-6 OF THE CODE OF ORDINANCES FOR THE CITY OF MADISON, ALABAMA, AND AMENDING CHAPTER 14 THEREOF, ALL RELATING TO NOISE PROHIBITIONS.

BE IT HEREBY ORDAINED by the City Council for the City of Madison, Alabama as follows:

Section 1. That Section 12-5 of the *Code of Ordinances for the City of Madison, Alabama*, is hereby repealed in its entirety, the subject matter henceforth to be addressed by the amendment of Chapter 14 in Section 3, *infra*.

Section 2. That Section 12-6 of the *Code of Ordinances for the City of Madison, Alabama*, is hereby repealed in its entirety, the subject matter henceforth to be addressed by the amendment of Chapter 14 in Section 3, *infra*.

Section 3. That Chapter 14 of the *Code of Ordinances for the City of Madison, Alabama*, is hereby amended to specifically reserve Sections 14-164 through 14-169.

Section 4. That there is hereby created an Article to be included in Chapter 14 of the *Code of Ordinances for the City of Madison, Alabama*, said Article to be numbered and named "Article XI. Noise" and to read as follows:

"ARTICLE XI. NOISE

Sec. 14-170. Intent.

It is the intent of the City Council to establish standards designed to reduce and eliminate unnecessary and excessive sounds and noises which jeopardize the public health, welfare, and safety or which are detrimental to the individual and collective quality of life for Madison residents.

Sec. 14-171. Definitions.

When used in this Article, the following terms shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Audible means loud enough to be heard. Words and phrases do not have to be discernible by the hearer for a sound or noise to be audible.

City shall mean the City of Madison, Alabama.

Emergency work means work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from any imminent exposure to danger.

Person means any individual, corporation, firm, partnership, association, organization or any other group or entity, whether public or private in nature.

Property line means the boundary line distinguishing ownership of real property or the common wall between townhouses, condominiums, or similarly-developed premises.

Public premises means all real property, including appurtenances thereon, which is owned or controlled by any public governmental entity and shall include streets, alleys, and parks but shall not include any public property leased to any nongovernmental entities.

Sound amplification device means any apparatus for the amplification of sounds from any radio, stereo, band, or orchestra or from any other sound-making or sound-producing device, including any apparatus for the amplification of the human voice.

Sec. 14-172. General prohibition.

It shall be unlawful for any person within the corporate limits of the City to make, produce, cause, continue, allow or permit any loud, excessive, unusual or unnecessary noise which unreasonably interferes with the comfort, repose, health, peace, safety or welfare of others inside the corporate limits of the City.

Comment [KB1]: It is important to remember that this section produces its own separate, distinct violations that aren't based on specific distances, sources of noise, or times.

Sec. 14-173. Specific violations.

In addition to the general prohibition set forth in Section 14-172, the following specific acts are declared to be unlawful:

- (a) *Motorized vehicles on public premises.* It shall be a violation of this section to use, play, or operate or to permit to be used, played, or operated any radio, compact disc player, digital music device, loudspeaker, stereo, musical or percussive instrument, or any other similar device which produces or reproduces sound, in or on a motor vehicle located on the public streets of the

City; located on property owned or leased by the City; within a public park; within a public parking lot; or on any other public premise within the City, whether such motor vehicle is stationary or in motion, in such a manner as to produce sound that is plainly audible to a person of normal hearing sensitivity more than twenty-five (25) feet from the vehicle.

- (b) *Motorized vehicles on private premises.* It shall be a violation of this section to use, play, or operate or to permit to be used, played, or operated any radio, compact disc player, digital music device, loudspeaker, stereo, musical or percussive instrument, or any other similar device which produces or reproduces sound, in or on a motor vehicle located on private property within the City, whether such motor vehicle is stationary or in motion, in such a manner as to produce sound that is plainly audible to a person of normal hearing sensitivity more than twenty-five (25) feet from any property line of the property where the sound originates.
- (c) *Other than motor vehicles—across property lines.* With the exception of noise emanating from motor vehicles as contemplated by subsections (a) and (b), it shall be a violation of this section to use, play, operate or to permit to be used, played, or operated any radio, compact disc player, digital music device, television, stereo, musical or percussive instrument, or any other similar device which produces or reproduces sound, in such a manner as to produce sound that is plainly audible to a person of normal hearing sensitivity more than twenty-five (25) feet from any property line of the property where the sound originates.
- (d) *Noises produced by horns, signaling devices, etc.* It shall be a violation of this section to sound any horn or signaling device on any automobile, motorcycle, truck or other vehicle for an unnecessary or unreasonable period of time on any street or in any public place within the City, except as a signal of warning or danger; to use any signaling device except one operated by hand or electricity; to use any horn, whistle or other device operated by engine exhaust; or to use any such signaling device when the regular movement of traffic is stalled, delayed, or otherwise slowed for any reason.
- (e) *Whistles.* It shall be a violation of this section to blow any locomotive whistle or any whistle attached to any stationary fixture except as a signal of warning or danger; to give notice of the time to begin or stop work; or upon the request of proper authorities.
- (f) *Exhaust.* It shall be a violation of this section to discharge into open air the

exhaust of any steam engine, stationary internal combustion engine, motor vehicle, motorboat, aircraft, or other vehicle except through a muffler or other device which effectively prevents loud or explosive noises therefrom.

- (g) *Defect in vehicle or load.* It shall be a violation of this section to use any motor vehicle which is either in such a state of disrepair or is loaded in such a manner that its use creates loud and unnecessary grating, grinding, rattling or other noise.
- (h) *Noise adjacent to schools, libraries, churches, hospitals.* It shall be a violation of this section to create any excessive noise on any street adjacent to any school, library, church, or hospital which unreasonably interferes with the workings of such institution or which disturbs or unduly annoys those lawfully within the buildings or on the premises, provided conspicuous signs are displayed along such street identifying the same as being adjacent to a school, library, church, or hospital.
- (i) *Peddlers.* It shall be a violation of this section for peddlers, solicitors and any other similar vendors to shout, cry, yell, or announce their presence or wares in a manner which disturbs the peace and quiet of any residential neighborhood.
- (j) *Participation in noisy parties or gatherings.* It shall be a violation of this section for persons to congregate at a party or gathering from which emanates noise of a sufficient volume or of such a nature that it disturbs the peace, quiet, comfort and repose of any neighboring inhabitants. If deemed appropriate by a responding officer, some or all of the persons present at such a party or gathering (other than the owners and/or tenants of the property) may be ordered to immediately disperse and vacate the premises. Any persons refusing to follow such lawful order may be subject to arrest.

Sec. 14-174. Commercial activities; exception.

- (a) *Loading and unloading.* It shall be a violation of this section to create loud and excessive noise in connection with the loading or unloading of any vehicle or dumpster or with the opening and destruction of bales, boxes, crates or containers, where such noise is audible more than twenty-five (25) feet from any property line of the property where the sound originates.
- (b) *Operation of trucks and equipment.* It shall also be a violation of this section to operate dumpster-moving equipment, street sweepers, delivery trucks, or similar equipment where such noise is audible more than twenty-five (25) feet

Comment [KB2]: Applicable to all districts. Measured outward so that protection is clearly inclusive of everyone more than 25' from the property line of the parcel where the noise is being made.

from any property line of the property where the sound originates.

Comment [KB3]: See above.

- (c) *Exception.* It shall not be a violation of this section if the commercial activity prohibited by subsection (a) or (b) occurs during the hours from 7:00 a.m. until 10:00 p.m. Monday through Saturday or during the hours from 10:00 a.m. until 7:00 p.m. on Sunday and City-observed holidays.

Comment [KB4]: Returned to the hours set forth in the current ordinance.

Sec. 14-175. Construction-related noise.

It shall be a violation of this section to engage in any construction-related activity that produces noise extending beyond the property line of the land upon which construction is taking place except between the hours of 7:00 a.m. and 9:00 p.m. Monday through Saturday and the hours of 10:00 a.m. and 7:00 p.m. on Sunday and City-observed holidays. Provided, however, that the operation of construction equipment at any hour is permitted as long as it does not produce noise that violates the provisions of Section 14-172.

Comment [KB5]: Returned to the hours and general language set forth in the current ordinance. "Any-hour" operation governed by general standards.

Sec. 14-176. Exemptions from enforcement.

The following uses and activities shall be exempt from the noise level regulations set forth in this Article:

- (a) Safety signals, warning devices, and emergency pressure relief valves.
- (b) Authorized emergency vehicles responding to an emergency call or acting in time of emergency.
- (c) Emergency work performed by or on the authorized behalf of the City of Madison, any public utility, or any other governmental agency to restore essential services or to restore property to a safe condition following a public emergency, including construction activities directly related to the abatement of the emergency.
- (d) Aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control instruction used 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 an emergency under the federal air regulations shall also be exempt from the provisions of this chapter.
- (e) Any vehicle or equipment of the City or a public utility while engaged in necessary public business.
- (f) Excavations or repairs of bridges, streets, or highways by or on behalf of the City or other governmental agency.
- (g) Use of domestic power equipment (including, but not limited to, power lawn

- mowers, leaf blowers, trimmers, snowblowers, tillers, saws, sanders, drills or similar devices) between 7:00 a.m. and 9:00 p.m. any day of the week.
- (h) Attendant on-site noise and the playing of instruments connected with the actual performance or practice of organized sporting events or school events held on school campuses and in publicly-owned parks or facilities.
 - (i) Chiming of bells or other similar sounds produced by a religious institution, school, or clock or bell tower.
 - (j) City-sponsored or City-organized events.
 - (k) Any siren, whistle, horn or bell used in case of fire, collision, civil defense, burglary, police activity or imminent danger; however, no burglar alarm or security device shall be allowed to sound for more than fifteen (15) minutes after being activated.
 - (l) Household generators used during a power outage.

Comment [KB6]: Provision made for operation of generators.

Sec. 14-177. Noise permit.

(1) *Application; exceptions.* Except for the provisions related to motor vehicles, application may be made for a noise permit relieving the applicant from the requirements and provisions of this Article. Such application shall be filed with the City Clerk no later than fifteen (15) days before the first date for which the permit is sought.

(2) *Contents of application.* The application for a noise permit shall contain the following information:

- (a) The name, address and telephone number of the person completing the application. If the individual is completing the application on behalf of a business or organization, the name, address and phone number of the main office or headquarters of the organization as well as the name, address and telephone number of the owner, manager or chairperson of the organization;
- (b) The name, address and telephone number of the individual, business or other group that will actually produce the noise;
- (c) A description of the noise that will occur, including whether the source of the noise will be live or mechanical;
- (d) The reason why the noise will be made;
- (e) The proposed date and time the noise will begin and when it will end;
- (f) A street address and general description of the location where the noise will occur, including, but not limited to, whether the property on which the noise will occur is a residence, park, church, commercial establishment or other; and
- (g) If the noise will be made in connection with a gathering of people, an estimate of the number of people involved.

(3) *Procedure for review and approval of application.* Upon receipt of an application for a noise permit, the City Clerk shall forward copies of the application to the Mayor, the City Attorney, the Police Chief, the Director of Community Development and Planning, and the appropriate Council representative for their review and comment. Following receipt of their input, the Mayor, as the permitting authority, shall be responsible for making the final determination regarding issuance of the requested permit. In deciding whether to issue a noise permit, the Mayor shall consider the following factors:

- (a) Whether the proposed activity or event complies with all applicable licensing, permitting and zoning laws and requirements of the City;
- (b) Whether the proposed activity, event or noise is reasonably likely to interfere with or jeopardize the health, welfare and safety of individuals in the vicinity;
- (c) The nature of the activity, event or noise, including whether the noise involves protected speech or expression;
- (d) The nature of the location, whether residential, commercial or other;
- (e) The proximity of the location to single-family or multifamily residences, churches and/or schools with consideration for the time of day the activity or event is to occur;
- (f) The length of time the noise will be made; and
- (g) Any other factors deemed relevant to the decision-making process.

When issuing a noise permit, the permitting authority may place any limits, restrictions or conditions on the permit it deems reasonably necessary to preserve public health, safety and welfare.

(4) *Contents of permit.* Every noise permit shall state the following information:

- (a) The name and address of the individual or organization being issued the permit;
- (b) The location, date, starting time and approximate length of time the noise is to occur;
- (c) Any limitations, restrictions or conditions on the permit; and
- (d) Any other information the Mayor deems necessary to ensure compliance with the permit and the laws of the City.

(5) *Invalidity of permit.* A noise permit issued pursuant to this Section shall cease to be valid under any of the following circumstances:

- (a) The permittee, individual or organization making or creating the noise fails to comply with all permit directions, limitations, restrictions or conditions and with all applicable City laws;

- (b) The permittee or a designated representative is not present at the permitted location and able to produce the noise permit during the entire time the noise is being made or created; or
 - (c) The application for the noise permit contains a material misrepresentation which was not corrected before the noise permit was issued.
- (6) *Revocation of permit.* The Mayor shall have the authority to revoke a permit prior to the activity or event, upon the joint concurrence of the City Attorney and Police Chief for good cause shown but, before doing so, shall give written notice to the permittee stating the grounds for revocation.

Comment [KB7]: The permitting procedure has been completely rewritten. Power now rests with the Mayor and the procedures for application, review, approval, and revocation are more clearly spelled out.

Sec. 14-178. Presumption of responsibility; penalties for violation.

- (1) *Responsibility.* Any person creating any sound or noise as is prohibited in this Article or anyone permitting such a sound or noise to emanate from any premises or vehicle under his care, custody or control shall be presumed responsible for the production of any such sound or noise.
- (2) *Penalties.*
- (a) Any person adjudged to be in violation of any of the provisions of this Article shall be guilty of a violation and, upon first conviction thereof, shall be fined a minimum of one hundred dollars (\$100.00) plus court costs.
 - (b) Upon second conviction for violation of any of the provisions of this Article, he shall be fined a minimum of two hundred fifty dollars (\$250.00) plus court costs.
 - (c) Upon third and each subsequent conviction for violation of any of the provisions of this Article, he shall be fined a minimum of five hundred dollars (\$500.00) plus court costs. In addition, he shall be subject to imprisonment for no less than twenty-four (24) hours.
 - (d) For purposes of prosecution, each day a violation is committed or permitted to continue is a separate offense."

Comment [KB8]: Imprisonment added to third conviction.

Section 5. That the provisions of this ordinance and any amendments which may be made in the future are separate and severable and that if any provision of this ordinance, or any application thereof to any person, thing or circumstances, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the provisions or application of this ordinance which can be given effect without the invalid provisions or application.

Section 6. That this Ordinance shall become effective upon its passage and final publication thereof as required by law.

READ, APPROVED and ADOPTED at a regular meeting of the City Council of the City of Madison, Alabama, on this the ____ day of _____, 2012.

Ronica Ondocsin, President
Madison City Council
City of Madison, Alabama

ATTEST:

Melanie A. Williard, City Clerk-Treasurer

APPROVED this ____ day of _____, 2012.

Paul Finley, Mayor
City of Madison, Alabama

DRAFT