

Chapter 15

NOISE

Sec. 15-1. Disturbing occupants of premises used for public worship or school purposes.

It shall be unlawful for any person by himself or by the use or operation of any instrumentality, agency or device whatsoever, to make or cause to be made any unnecessary, unreasonable, unseemly, boisterous, loud or disorderly noise within normal hearing distance of any church or school or within normal hearing distance of any building, place or structure being used for church or school purposes within the city in such manner as to unreasonably disturb the occupants thereof, while any such building, structure or other place is being used for public worship or for school purposes. (Ord. 952, sec. 2, 5-1-41)

Cross reference--see section 1-11 - enhanced penalties

Sec. 15-1.1 Definitions.

(a) Daytime hours shall mean the hours from 7:00 a.m. on one day and 10:00 p.m. the same day for residential properties or areas and 6: 00 a.m. on one day and midnight on the same day for nonresidential properties or areas. (Ord. 2945, Sec.1,2-6-07)

(b) Emergency shall mean any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss that demands immediate action. (Ord. 2945, Sec.1,2-6-07)

(c) Emergency work shall mean any work performed for the purpose of

- (i) preventing or alleviating the physical trauma or property damage threatened or caused by an emergency,
 - (ii) restoring property to a safe condition following a fire, accident, or natural disaster,
 - (iii) protecting persons or property from exposure to danger, or
 - (iv) restoring public utilities.
- (Ord. 2945, Sec.1,2-6-07)

(d) Nighttime hours shall mean the hours between 10:01 p.m. on one day and 6:59 a.m. the following day for residential properties or areas and 12:01 a.m. and 5:59 a.m. the same day for nonresidential properties or areas. (Ord. 2945, Sec.1,2-6-07)

(e) Nonresidential property/areas shall mean any real property that is not included in the definition of residential property as defined in this section. Without limitation, the term includes properties that have been zoned other than as residential property, and properties that are devoted to public purposes, such as public parks. (Ord. 2945, Sec.1,2-6-07)

(f) Plainly audible means any sound that can be detected by a person using his or her unaided hearing faculties. For example, if the sound source under investigation is a portable or

personal vehicular sound amplification or reproduction device, the enforcement officer need not determine the name of the song, specific words or the artist performing it. The detection of the rhythmic bass component of the music is sufficient to constitute a plainly audible sound. (Ord. 2945, Sec.1,2-6-07)

(g) Property line shall mean, with respect to single occupancy properties, the line along the ground surface and its vertical extension that separates the real property owned, leased, or occupied by one person from that owned, leased, or occupied by another person. With respect to shared occupancy properties the term shall mean the imaginary line that represents the legal limits of occupancy of any person who owns, leases, or otherwise occupies an apartment, condominium, hotel or motel room, office, or any other type of occupancy from that of other occupants. (Ord. 2945, Sec.1,2-6-07)

(h) Residential property/ areas shall mean any real property zoned R-1A, R-1B, R-1C, R-2, R-3 or R-4. (Ord. 2945, Sec.1,2-6-07)

(i) Streets shall be defined as being in the same category as the surrounding zoning. In the case of residential properties/areas, which are across the street from nonresidential properties/areas, the street shall be considered to be in a residential area.(Ord. 2945, Sec.1,2-6-07)

Sec. 15-1.2. General Prohibitions.

- A. It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary, or unusual noise that annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others. In determining whether a noise is loud, unnecessary, or unusual, the following factors shall be considered: time of day; proximity of residential properties/areas as defined above; whether the noise is recurrent, intermittent, or constant; the volume and intensity; whether the noise has been enhanced in volume or range by any type of electronic or mechanical means; and whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof. (Ord. 2945, sec. 2,2/6/07)
- B. It shall be unlawful for any person to make, assist in making, permit, continue, cause to be made or continued, or permit the continuance of any sound that either exceeds the level which can be heard at a distance greater than 50 feet or otherwise unreasonably disturbs, injures, or endangers the comfort, repose, health, peace or safety of others.(Ord. 2945, sec. 2, 2/6/07)
- C. It shall be unlawful for any person to pour a slab, demolish a building, or utilize any commercial or industrial power tools before 7 am or after 10 pm on any day without having notified all persons who would be entitled to notice of a zoning change under the City of Hattiesburg's Zoning ordinance as may be amended from time to time, in relationship to the property upon which the pouring, demolition or use of tools is to take place at lease ten (10) days prior to such activity. Such notice shall be sent in the same manner as set out in the said Zoning Ordinance. No building permit shall be issued in the absence of such notice. This prohibition shall not apply to emergency work(Ord. 2945, sec2,. 2/6/07).
- D. The acts enumerated in this chapter, among others, are declared to loud, disturbing, and unnecessary noises in violation of this chapter, but such enumeration shall not be deemed to be exclusive.(Ord. 2945, sec.2, 2/6/07)
- E. This ordinance shall not apply to any public utility or public works.(Ord. 2945)

Furthermore, the intent of this chapter is to strike an appropriate balance between the right of individuals to obtain information and derive pleasure by listening to radios and other devices and the right of the public to a peaceful and healthful environment.(Ord. 2945, sec. 6, 2/6/007)

It is not the intent of this chapter to interfere with freedom of speech or religion.(Or. 2634, sec. 1-2, 4-21-98)

Sec. 15-2. Noises designed to disturb premises where sickness prevalent; quiet signs required.

It shall be unlawful for any person by himself, or by the use or operation of any means whatsoever to make or cause to be made any unnecessary, unreasonable, unseemly, boisterous or disorderly noise within normal hearing distance of any hospital, infirmary, home or other institution or place wherein there is then located any sick or injured person, when the nature of any such noise disturbs or is calculated to disturb any such sick or injured person, provided, however, that any hospital, infirmary, home or other institution or place, or any of the occupants thereof, desiring the special protection of this section shall display and maintain at or near the street boundaries of the premises thereof a sign or signs visible to a normal person for a distance of not less than one hundred feet, making known the character of such hospital or infirmary, or making known the fact that such home or other institution or place has located therein some sick or injured person. The sign or signs herein provided for shall be sufficient if they have thereon the wording "Hospital", "Infirmary", or "Sickness, Quiet", as the case may be, or words of like effect or of similar import, which the sign or signs shall be placed and visible as herein above provided. (Ord. 952 sec. 3, 5-1-41)

Sec. 15-2.1. Noisy animals and birds.

(a) The keeping of any animal or bird that causes or makes frequent or long and continued sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of ordinary, reasonable persons of normal sensibilities and ordinary tastes, habits, and modes of living who reside in the vicinity thereof is hereby prohibited and declared to be unlawful as a sound nuisance in violation of this chapter.

(b) In any prosecution for a violation of this section, the fact that any loud animal noise which disturbed any person and which occurs in residential areas either:

(1) during nighttime hours; or

(2) when none of the residents who reside at the place where the animal or bird is being kept are at home: shall create a rebuttable presumption that such noise was in violation of this Chapter.

(c) In any prosecution for a violation of this section, the fact that any animal or bird has been allowed or permitted to persistently and chronically violate this section, as demonstrated by the issuance of two or more citations and or the receipt of two or more complaints from more than one household within a two month period shall create a rebuttable presumption that such noise was in violation of this Chapter.(Ord. 2945, Sec. 5, 2-06-07)

Sec. 15-3. Operation of sirens and gongs.

Except as otherwise herein provided, it shall be unlawful for any person to use or operate in the city any gong or any siren or other alarm or noise making device on any vehicle, whether propelled by motor or muscular power, if such device is similar in tone and sound to the gongs and sirens in use by the ambulances, police cars and vehicles of the fire department in the city. The provisions of this section shall not apply, however, to the operators of ambulances when actually responding to an emergency call, or when actually transporting an injured or sick person to the hospital, infirmary, or other place for emergency treatment; nor shall the provisions of this section apply to the operators of the vehicles of the fire and police departments of the city, nor to the operators of any of the vehicles of the national, state, county or other law enforcement agencies while such operators are actually engaged in the discharge of their official duties. (Ord. 952, sec. 4, 5-1-41)

Cross reference--see section 1-11 - enhanced penalties

Section 15.4. Amplifying devices operated from premises; permit required:

Except for burglary alarms registered with the City Police Department or as herein provided, it shall be unlawful for any person to use or operate or to cause to be used or operated within the City, in front of or outside of any building, place or premises, or through any window, doorway or opening of any building abutting upon any public street, avenue, alley or sidewalk, any apparatus or device for tapping on windows, or any apparatus or device for amplifying sounds from any radio or phonograph or other sound producing or sound reproducing device. Loud speakers or other sound transmitting, sound amplifying, sound producing or sound reproducing devices may be used or operated in connection with public speaking or public gatherings if a permit therefore be first obtained from the Hattiesburg Police Department Chief of Police or his designee.(Ord. 2742, sec. 1, 12-19-00, Ord. 952, sec. 5, 5-1-41)

It shall be unlawful for any person to make, assist in making, permit, continue, cause to be made or continued, or permit the continuance of any sound using any sound amplifier that is part of or connected to any speaker system, radio, stereo receiver, compact disc player, cassette tape player, microphone, or any other sound source, when operated:

- a. in such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants
- b. at any time with louder volume than is necessary for convenient hearing for persons within the property or premises in which such sound amplifier is operated and who are voluntary listeners thereto
(Ord. 2945, sec. 4, 2/06/07)

The operation of any such sound amplifier in such a manner that bass sounds are plainly audible at a distance of 50 feet or more from the property line of a property or premises in which the amplification is located shall be presumed to be violation. (Ord. 2945, sec. 4, 2/06/07)

Sec. 15.4.1. Permit Required

1. No person shall make use of amplifying devices, from any premises unless a permit has been obtained from the Chief of Police or his designee. (Ord. 2742, sec. 1, 12-19-00)
2. This section shall not apply to: See Section 15.8.1 - Exemptions(Ord. 2742, sec. 1, 12-19-00)

Sec. 15.4.2. Permit required for use of outdoor sound amplification equipment.

- A. No person shall use or cause to be used any loudspeaker, loudspeaker system, sound amplifier, or any other machine or device that produces, reproduces, or amplifies sound outside of buildings or other enclosed structures in a manner that exceeds the 50 feet limit, without first obtaining a permit to do so. No permit is required for any use not exceeding the said permissible limit. The permit shall be granted only for the amplification of music or human speech, or both (Ord. 2945, Sec. 6, 2-06-07)

The Permit:

- 1. May be obtained by making application to the director of the city department so designated by the city manager. Requires payment of a \$10.00 fee for the administrative costs of issuing the permit or a sworn statement of inability to pay the fee. Is valid for any requested period between the hours of 8:00 a.m. and 10:00 p.m. in residential areas or between 7 a.m. and midnight in non-residential areas(Ord. 2945, Sec. 6, 2-06-07)
- 2. Shall not be issued to the same or any other person for the same location more than twice during any 30 day period. In the case of a sound truck, location shall relate to the area traversed by the truck in one day. (Ord. 2945, Sec. 6, 2-06-07)

Sec. 15.4.3. Application. Required.

- A. A person seeking issuance of a permit shall file an application with the Chief of Police on form(s) provided by the Chief of Police.
- B. Filing Period - An application for a permit shall be filed with the Chief of Police not less than ten (10) days before the date which the event is to be held. The application shall be signed by the applicant and notarized.
- C. Contents - The application for a permit shall set forth the following information.
 - 1. The date of the application and the date and hours for which the permit is requested. (Ord. 2945, sec. 6, 2/06/07)
 - 2. The name and address of the applicant(Ord. 2945, sec. 6, 2/06/07)
 - 3. The name and address of the person who will have charge of the sound amplifying equipment (Ord. 2945, sec. 6, 2/06/07)
 - 4. The address and a description of the location where the sound equipment will be used. (Ord. 2945, sec. 6, 2/06/07)
 - 5. A description of the type of sound amplifying equipment to be used. (Ord. 2945, sec. 6, 2/06/07)
 - 6. The reason for the event. (Ord. 2742, sec. 1, 12-19-00)
 - 7. Any additional information which the Chief of Police shall find reasonably necessary to make a fair determination as to whether a permit should be issued. (Ord. 2742, sec. 1, 12-19-00)
 - 8. Late applications - The Chief of Police, where good cause is shown therefore, shall have the authority to consider any application hereunder which is filed less than ten (10) days but at least forty-eight (48) hours before the date such event is proposed to be conducted. (Ord. 2742, sec. 1, 12-19-00)
 - 9. Persons operating a vending truck equipped with a loud speaker or similar noise-making device shall file an application for permit with the Chief of

Police and such permit shall be effective for one (1) year from the date of issuance.(Ord. 2742, sec. 1, 12-19-00)

Sec. 15.4.4. Standards of Issuance

The Chief of Police shall issue a permit as provided for hereunder when, from a consideration of the application and from such other information as may otherwise be obtained, he finds that:

1. The conduct of the event will not substantially interrupt the normal, safe and orderly life of the neighborhood and citizens in the area of the event.
2. The concentration of persons and vehicles in the area of the event will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such event.
3. The conduct of the event is not reasonably likely to cause injury to persons or property to provoke disorderly conduct or create a disturbance.(Ord. 2742, sec. 1, 12-19-00)

Sec. 15.4.5. Notice of Rejection

The Chief of Police shall act upon the application for a permit within three (3) days after the filing thereof. If the Chief of Police disapproves the application, he shall mail to the applicant, by certified mail, within three (3) days after the time upon which the application was filed, a notice of his action stating the reasons for his denial of the permit.(Ord. 2742, sec. 1, 12-19-00)

Sec. 15.4.6. Appeal Procedure

Any person aggrieved shall have the right to appeal the denial of a permit to the governing authorities of the City. The appeal shall be taken within two (2) days after receipt of the Notice of Denial. The governing authorities shall act upon the appeal at the next regularly scheduled City Council Meeting.(Ord. 2742, sec. 1, 12-19-00)

Sec. 15.4.7. Duties of Permittee: Possession of Permit

A permittee hereunder shall comply with all permit directions and conditions and with applicable laws and ordinances.

The event chairman or other person heading or leading such event shall carry the event permit upon his or her person during the course of the event.(Ord. 2742, sec. 1, 12-19-00)

Sec. 15.4.8. Revocation of Permit

The Chief of Police shall have the authority to revoke a permit issued hereunder upon violation of the standards for issuance as herein set forth.(Ord. 2742, sec. 1, 12-19-00)

Sec. 15-5. Whistles, bells, etc., used for purpose of attracting customers.

It shall be unlawful for any peddler, vender, hawker, taxi driver, or any other person who plies his trade, business or calling on any of the public streets, avenues, alleys or sidewalks of the city, to blow or cause to be blown or otherwise to use or operate or cause to be used or operated any horn, whistle, bell or other noise making device on or in any of the public streets, avenues, alleys or sidewalks of the city for the purpose of calling, directing or attracting attention to the business, trade, calling, vehicle or presence of any such person. (Ord. 952, sec. 6, 5-1-41)

Sec. 15-6. Operation of so-called sound trucks prohibited.

A. It shall be unlawful for any person to operate any motor vehicle or other conveyance on or in the public streets, avenues, alleys or sidewalks of the City while there is in operation on any such vehicle or conveyance any loud speaker, sound amplifier, megaphone or other similar noise-making device unless such person has applied for and received a permit to do such under Section 15.4.2 (E).(Ord. 2742, sec. 1, 12-19-00)

1. It shall be unlawful for any person to make, assist in making, permit, continue, cause to be made or continued, or permit the continuance of any sound using any sound amplifier that is part of or connected to any speaker system, radio, stereo receiver, compact disc player, cassette tape player, microphone, or any other sound source, when operated:
 - i. in such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants
 - ii. at any time with louder volume than is necessary for convenient hearing for person who are in the vehicle
 - iii. The operation of any such sound amplifier in such a manner as to be plainly audible at a distance of 50 feet or more from a vehicle

(Ord. 2945, sec. 4, 2/06/07)

B. It shall be unlawful for any person or persons to play, use, operate or permit to be played, used or operated any radio, tape recorder, cassette player, or other machine or device for reproducing sound, if located in or on any of the following:

1. Any public property, including any public street, highway, building, sidewalk, park or thoroughfare; or any motor vehicle on a public street, highway or public space; and if the sound generated is audible at a distance of fifty (50) feet from the device producing the sound; and
2. Any private property, including any private drive, parking area, or building, or any motor vehicle located thereon, if the sound generated is audible at a distance of fifty (50) feet from the property line from which the device producing the sound is located.

(Ord 2634, sec. 3, 4-21-98; Ord. 952, sec. 7, 5-1-41)

C. It is an affirmative defense to prosecution that the sound source is a motor vehicle and that;

1. The motor vehicle is a mobile sound stage or studio that is being used on a stationary basis as at a location not situated upon any street for the purpose of providing sound, during daytime hours, for an event or function
2. The use is in compliance with all other provisions of this chapter.

(Ord. 2945, sec. 4, 2/06/07)

Sec. 15-7. Mufflers required for vehicles.

It shall be unlawful for any person to operate or cause to be operated any motor or motor vehicle on any of the public streets, avenues, alleys or sidewalks of the city with an open muffler or with a muffler cut-out, or to willfully or intentionally cause the motor of any such vehicle to backfire, or to continue the operation of any such vehicle if the motor thereof persists in backfiring. (Ord. 952, sec. 8, 5-1-41)

Sec. 15-7.1 Noisy Vehicles

A. The use of any motor vehicle so out of repair or so extra loaded, that it creates any loud and unreasonable or unusual, (that is, not standard equipment for the type vehicle, or which violates state of Mississippi regulations for equipment or emissions), grating, grinding, rattling, or any other loud and unreasonable sound is hereby prohibited and declared to be unlawful.(Ord. 2945, Sec 3, 2-6-07)

B. No person shall operate an engine of any motor vehicle as defined by the Mississippi Transportation Code so as to "brake" or slow the same through the use of gears (commonly known as "jake braking") or by any other method which produces any noise in addition to the normal operating engine noise.(Ord. 2945, Sec. 3, 2-6-007)

C. No person shall operate or allow an engine of any sort of motor vehicle, except emergency equipment or vehicles then located at a permitted public event or parade, to idle for more than one (1) hour (Ord. 2945, Sec, 3, 2-6-07)

Sec. 15-8. Defenses.

This chapter shall not apply to school-sponsored athletic events or City-sponsored events under authority as otherwise provided by law.(Ord. 2742, sec. 1, 12-19-00)

1. The emission of any sound was for the purpose of alerting persons to the existence of an emergency, danger, or attempted crime, or was produced pursuant to any safety rule or regulation of any governmental entity or agency.
2. The sound was produced by an authorized emergency vehicle.
3. The sound was produced by emergency work.
4. The sound was generated:
 - a. At a lawfully scheduled stadium event
 - b. By a parade and spectators and participants on the parade route during a lawful parade.
 - c. By spectators and participants at lawfully scheduled amphitheater event.
 - d. By patrons and participants using cannons and gunfire during historical battle re-enactments for which a pyrotechnic permit was obtained and the explosives were inspected by the fire marshal
 - e. By a pyrotechnic display that was inspected and approved by the fire marshal
 - f. By spectators and participants of any outdoor event, fun run, race, festival, fiesta, or concert that was sponsored or cosponsored by the city and in full compliance with a permit issued by the city
5. The sound was produced by the erection, excavation, construction, or demolition of any building or structure, including the use of any necessary tools or equipment.
6. The sound was produced by aircraft, in flight or in operation at an airport, or railroad equipment in operation on railroad rights-of-way.
7. The sound was produced by operating or permitting the operation of any mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, lawnmower, or any

other similar device used between the hours of 6:00 am and 9:00 pm when the sound is being produced for the maintenance or upkeep of the property on which it was operated

8. The sound was generated as authorized under the terms of a permit issued under this code.
9. The sound was produced by church bells or church chimes when used as part of a religious observance or service during daytime hours for the zone in which the church is located.
10. The sound was produced during daytime hours by activities conducted on public parks, public playgrounds, and public or private school grounds, including, but not limited to school athletic, band and school entertainment practice or events.

(Ord. 2945, sec. 8, 2/06/07)

Sec. 15-9. Violation; penalty.

Any person found guilty or violating any or the provisions of this chapter shall be punished with the fine of five hundred dollars (\$500.00). Each hour or portion thereof in which any violation shall occur shall constitute a separate offense.(Ord. 2945, sec 8,2/6/07)

Enforcement hereunder shall not require the pleading or proving of any culpable mental state.(Ord. 2945, sec. 8,2/6/07)

The Chief of Police or his designee, or the designees of the Code Enforcement Department shall have the power, whenever they may deem it necessary, to enter upon the premises named in this chapter to ascertain whether the premises are in compliance with chapter. Enforcement will be through issuance of a summons and complaint. (Ord. 2945, sec 8, 2/6/07)

That possession by a person or persons of any of the machines or devices enumerated shall be prima facie evidence that person(s) operates the machine or device. (Ord. 2742, sec. 1, 12-19-00,Ord. 2634, sec. 4 & 6, 4-21-98; Ord. 1508, sec. 1, 5-13-64)

1. It shall be unlawful for any person to stage, present or conduct, or attempt to stage, present or conduct an event without first having obtained a permit therefore as herein provided or who shall otherwise violate any of the provisions of this chapter.
2. It shall be unlawful for any person to participate in an event for which permit has not been granted.
3. It shall be unlawful for any person to fail to comply with all directions and conditions of said permit.

Sec. 15-10. Severability.

In the event that any portion of this chapter is ruled invalid or unconstitutional for any reason, the invalid portions shall be severed herefrom and the remaining portion or portions of the chapter shall continue in effect. (Ord. 2634, sec.7, 4-21-98)

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