

AMENDED ORDINANCE NO. 32

SOUND ABATEMENT

BE IT ORDAINED BY THE GOVERNING AUTHORITIES OF THE CITY OF D'IBERVILLE UPON MOTION BY COUNCILMAN Stephen Furney , WITH SECOND BY COUNCILMAN Joey Bosarge, AS FOLLOWS:

(a) *Definitions.* For purposes of this section, the following words, terms, and phrases shall have the following meanings:

- (1) *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.
- (2) *Emergency* means any occurrence or set of circumstances involving actual or eminent physical trauma or property damage which demands immediate action.
- (3) *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.
- (4) *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.
- (5) *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.
- (6) *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, semitrailers, campers, go-carts, amphibious craft on land, dune buggies, or racing vehicles, but not including motorcycles.
- (7) *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.

- (8) *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 minibikes.
 - (9) *Nursing home* has the same definition and meaning as defined in Miss. Code Ann. 73-17-5(6) (1972), as amended.
 - (10) *Person* means any individual, firm, association, partnership, corporation, joint venture, or any entity, public or private in nature.
 - (11) *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 intrabuilding real property divisions.
 - (12) *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.
 - (13) *Racing boats* has the same definition and meaning as defined in subsection 2-116(a) of section 2-116 of this Code of Ordinances.
 - (14) *Residence* or *residential area* means a single-family, duplex, or multifamily dwelling or an area having such dwellings.
 - (15) *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, phonographs, cassette tape players or similar devices.
- (b) *Noises interfering with enjoyment of property or public peace and comfort prohibited.* No person shall make or cause to be made any loud and raucous noise in the city which is offensive to the ordinary sensibilities of the inhabitants of the city, which noise renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort.
- (c) *Specific noises interfering with enjoyment of property or public peace and comfort enumerated.* The following acts, among others, are declared to create loud and raucous noises, and shall be deemed a violation of this section, but such enumeration shall not be deemed to be exclusive:
- (1) The 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 unreasonably loud and raucous noise.
- (4) The use of any motor vehicle, motorcycle, or motorboat so out of repair which emits or creates loud, raucous, or rattling noises.
- (5) The 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 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.
- (9) The creation of loud and raucous noise on any street or property adjacent to any school, church, public library, or court which is in session or adjacent to any hospital; 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 school, church, public library, court, or hospital, is adjacent thereto.
- (10) The shouting and crying of peddlers, hawkers, and vendors which disturbs the quiet and peace of the neighborhood.
- (11) The use of any drum or other instrument or sound equipment 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.
- (12) 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.
- (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.

- (d) *Presumption.* Whenever a violation of this section occurs, it is presumed that the registered owner of the motor vehicle or motorcycle for which the citation is issued is the person who committed the violation, 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.
- (e) *Use of bell, siren, compression, or exhaust whistle on motor vehicles, motorcycles, and motorboats.* Except as specifically authorized or permitted elsewhere in this section, no person shall 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.
- (4) It is a defense to prosecution herein:
- a. In circumstances in which this section requires an order, no order was given;
 - b. An order, if given, was manifestly unreasonable in scope;
 - c. An order, if given, was promptly obeyed;
 - d. 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;
 - e. The person operating the sound equipment was a law enforcement officer or member of the fire department in the performance of official duties;
 - f. The sound equipment was operated for the purpose of alerting persons to the existence of an emergency or danger; or
 - g. 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.
 - h. No person operating or occupying a motor vehicle on any street, highway, alley, parking lot, or driveway, either public or private property, shall operate or permit the operation of any sound amplification system, including, but not limited to, any radio, tape player, compact disc player, loud speaker, or any other electrical device used for the amplification of sound from within the motor vehicle so that the sound is plainly audible at a distance of fifty or more feet from the vehicle or, in the case of a motor vehicle on private property, beyond the property line. For the purposes of this subsection, “plainly audible” means any sound which clearly can be

heard, by unimpaired auditory senses based on a direct line of sight of fifty or more feet, however, words or phrases need not be discernible and said sound shall include bass reverberation. Prohibitions contained in this section shall not be applicable to emergency or public safety vehicles, vehicles owned and operated by the metropolitan government or any utility company, for sound emitted unavoidably during job-related operation, or any motor vehicle used in an authorized public activity for which a permit has been granted by the appropriate agency of the metropolitan government.

(g) *Exemptions.* The following are exempt from the provisions of this section:

- (1) Domestic power tools, lawn mowers, and agricultural equipment between the hours of 7:00 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 a permit has been granted by the city.
- (5) 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.
- (6) Noises or sounds from church bells and chimes.
- (7) 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., weekdays, 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.
- (11) Public or private school functions which occur on the property of the school.
- (12) 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.

- (13) Any burglar alarm or security device, provided, however, no burglar alarm or security device shall sound for more than a reasonable amount of time after being activated.
- (14) The emission of any sound which was created or produced for the purpose of alerting a person to the existence of an emergency, danger, or attempted crime, which was 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.
- (15) 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.
- (16) Noises or sounds resulting from lawful fireworks or noisemakers used for celebration of an official holiday or in accordance with a variance.

(h) *Variances and permits.*

- (1) 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 ten dollars (\$10.00) 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:
 - a. 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
 - b. The applicant needs additional time to modify equipment or take other action in order to comply with the provisions of this section.
- (2) 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 city council. 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.

- (3) 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 Gulfport:
 - a. Distance of proposed activities from a residential area or zone;
 - b. Number of sound amplification equipment or devices;
 - c. Anticipated direction of sound amplification equipment or devices;
 - d. Anticipated duration of proposed activities;
 - e. Whether the activity will be held within or outside of a structure;
 - f. The time of day or night the noise or sound will occur; and
 - g. Any other consideration deemed necessary by the chief of police.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) The chief of police shall have the authority to revoke any permit or variance issued on the finding of any of the following:
 - a. 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.
 - b. That there is any misrepresentation of the activity on the application for the variance or permit.
 - c. 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.

- (i) *Violations and penalties.* Any person found guilty of violating the provisions of this section 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. Each day any violation of this section occurs shall continue shall constitute a separate offense. As an additional remedy, violations of subsections (b) through (g) of this section 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 section, or which operation or maintenance exceeds the limitations of this section, may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

THEREFORE, BE IT ORDAINED AS FOLLOWS:

The foregoing ordinance having first been reduced to writing was read by the Clerk and motion by **Stephen Furney**, seconded by **Joey Bosarge** to accept the ordinance and upon call for a vote the following was recorded:

AYES:

NAYS:

Brenda Broussard_____

Henry Toncrey_____

Teddy Harder_____

Stephen Furney_____

Joey Bosarge_____

The Mayor resolution the carried this the 19th day of January, 2010.