

ORDINANCE NO. 2016-1227

**TO AMEND CHAPTER 30, ARTICLE III OF THE CODE
OF ORDINANCES FOR THE CITY OF ORANGE BEACH
ENTITLED "NOISE"**

SECTION 1. Be it ordained by the City Council for the City of Orange Beach, Alabama that Article III, Chapter 30 of the Code of Ordinances for the City of Orange Beach is hereby amended as follows:

Sec. 30-41. Legislative Findings

The City Council finds:

- (1) The City of Orange Beach is a resort island community that attracts thousands of visitors each year. Tourism is an important part of the local economy supporting numerous restaurants, hotels, and entertainment venues.
- (2) Orange Beach's numerous attractions for tourists and residents include peaceful nature trails and campgrounds, as well as beaches, fishing, and boating. The City also has an active nightlife with music, dancing and dining.
- (3) In recent years there have been an increasing number of complaints from both tourists and residents about excessive noise, especially at night.
- (4) Excessive noise and excessive vibration degrade the environment; interfere with the comfortable enjoyment of life, property and recreation; and with the conduct and operation of business and industry; and cause nuisances.
- (5) The United States Environmental Protection Agency has found that that there are direct links between noise and health. Problems related to noise include stress related illnesses, high blood pressure, speech interference, hearing loss, sleep disruption, and lost productivity. Noise Induced Hearing Loss (NIHL) is the most common and often discussed health effect, but research has shown that exposure to constant or high levels of noise can cause countless adverse health affects.

Sec. 30-42. Purpose

(1) The purpose of this Article is to reduce, control and prevent loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity who live, work, visit, or play in the City of Orange Beach.

(2) The use of sound amplification equipment creates loud and raucous noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace, and freedom of inhabitants of, and visitors to, the City of Orange Beach.

(3) Certain short-term easing of noise restrictions is appropriate and necessary for the physical and commercial vitality of Orange Beach.

(4) The effective control and the elimination of loud and raucous noise are essential to the health and welfare of Orange Beach's inhabitants and visitors, and to the conduct of the normal pursuits of life, including recreation, work, and communication.

It is the intent of this ordinance 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 residents to the quiet enjoyment of their property, and the public's right to a peaceful and healthful environment. It is not the intent of this legislation to interfere unduly with speech or religion by regulating the initial production or amplification of the human voice or sound.

Sec. 30-43. 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. All terminology used in this article, not defined in this section, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

“Commercial Area” means an area designated for commercial uses under the zoning ordinance of the City.

“Demolition” means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

“Emergency” means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

“Emergency Work” means any work performed for the purpose of preventing or alleviating physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.

“Neighborhood Residual Sound Level” means that sound level value as measured on a public street or right-of-way 15 feet or more from the source, which represents the summation of the sound from all of the discrete sources affecting a given site at a given time, exclusive of extraneous sound and the sound from the source of interest.

“Noise” means any unwanted sound. Sound becomes unwanted when it either interferes with normal activities such as sleeping, or disrupts or diminishes one’s quality of life.

“Noise Disturbance” means any extraordinary noise which annoys or disturbs humans, or which causes or tend to cause an adverse psychological or physiological effect; any noise which endangers or injures the safety or health of humans or animals; or which annoys or disturbs a reasonable person of normal sensitivities, or endangers or injures personal or real property.

“Noise Sensitive Zone” means any area designated pursuant to this article for the purpose of ensuring exceptional quiet.

“Outdoor Music Venue” means a commercial property where, during the normal course of business, sound equipment is used to amplify sound that is not fully enclosed by permanent, solid walls and a roof. The term does not include special events that may use sound equipment.

“Person” means any individual, firm, association, partnership, joint venture, or corporation.

“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 government entity.

“Public Property” means property owned by the government or one of its agencies, divisions, or entities, including but not limited to parks, playgrounds, streets, sidewalks, schools, libraries and other property regularly used by the general public.

“Private property” means land not owned by the government or dedicated to public use.

“Real Property Boundary” means a line along the ground surface, and this vertical extension, which separates the real property owned by one person from that owned by another person, but not including intrabuilding real property divisions.

“Residential Area” means any real property which contains a structure or building in which one or more persons reside, provided that the structure or building is properly zoned, or is legally nonconforming, for residential use in accordance with the terms and maps of the City of Orange Beach zoning ordinance.

“Sound Equipment” means a loud speaker, public address system, amplification system or other sound producing device.

Section 30-44. General Prohibition

(a) No person shall make, continue, or cause to be made in the City any noise disturbance, including, but not be limited to:

1. Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, within the limits of the City of Orange Beach; or
2. Any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the vicinity from which said noises emanate, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of

business, or as to detrimentally or adversely affect such residences or places of business.

(b) Factors for determining whether a sound is noise disturbance, include, but are not limited to:

1. The proximity of the sound to sleeping facilities, whether residential or commercial;
2. The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
3. The time of day or night the sound occurs;
4. The duration of the sound; and
5. Whether the sound is recurrent, intermittent, or constant.

Sec. 30-45. Noises Prohibited

The following acts are declared to be public nuisances and are hereby declared per se violations of this ordinance. This enumeration does not constitute an exclusive list:

(a) **Unreasonable Noises.** The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous or unusual noise, disturbance, commotion or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, park, or other place or building. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision.

(b) **Non-Emergency Signaling Devices.** Sounding or permitting the sounding of any amplified signal from any bell, chime, siren, whistle, or similar device that is used primarily for non-emergency purposes, from any place for more than ten (10) consecutive seconds in any hourly period. The reasonable sounding of such devices by houses of religious worship, seasonal contribution solicitors or by the City for traffic control purposes are exempt from the operation of this provision.

(c) **Emergency Signaling Devices.** The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided in sub-sections 1 and 2 below.

1. Testing of an emergency signaling device shall occur between 7:00 a.m. and 7:00 p.m. Any testing shall use only the minimum cycle test time. In no case shall such test time exceed five (5) minutes. Testing of the emergency signaling system shall not occur more than once in each calendar month.
2. Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm shall terminate within fifteen (15) minutes of activation unless an emergency exists. If a false or accidental activation of an alarm occurs more than twice in a calendar month, the owner or person responsible for the alarm shall be in violation of this ordinance.

(d) **Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices.** No person shall cause, suffer, allow, or permit the unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound on public or private property if the sound is plainly audible outside the property limits upon which the noise is emanating.

Radios, cassette players, disk players and similar devices associated with motor vehicles or motorboats, shall not be operated in such a manner as to create noise at 50 feet or more from such device, when operated on a public right-of-way, waterways, beaches, or public space.

In no instance shall the sound level exceed the maximum sound level limits set forth in Table I when measured on the property line of the adjacent affected property. These sound level measurements shall be conducted with the sound level meter set for A-weighted measurement.

**TABLE I
MAXIMUM PERMISSIBLE SOUND LEVEL IMMISSIONS**

Week nights 9:00 p.m. - 7:00 a.m. Weekend nights 10:00 p.m. - 9:00 a.m.	All other times
50 dB(A)	65 dB(A)

No person shall cause, suffer, allow, or permit the operation of any loudspeaker, amplifier, public address system, and similar devices in such a manner that the sound crosses a property line and raises the total sound levels above the neighborhood residual sound level by more than the permissible sound level limits set forth in Table II when measured within the habitable structure of a complainant. These sound level measurements shall be conducted with the sound level meter set for C-weighted measurement. This shall not apply to any public performance, gathering or parade for which a permit has been obtained from the City of Orange Beach.

**TABLE II
MAXIMUM PERMISSIBLE INCREASE IN TOTAL SOUND LEVELS
WITHIN A RESIDENTIAL NEIGHBORHOOD**

Week nights 9:00 p.m. - 7:00 a.m. Weekend nights 10:00 p.m. - 9:00 a.m.	All other times
3 dB(C)	6 dB(C)

(e) **Yelling, Shouting and Similar Activities.** Yelling, shouting, hooting, hollering, whistling or singing in any residential area or in public places between the hours of 9:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities.

(f) **Commercial Establishments Adjacent to Residential Property.** No person shall cause, suffer, allow, or permit unreasonably loud and raucous noise from the premises of any commercial establishment that is plainly audible outside the limits upon which the noise is emanating. In no instance shall the sound level exceed the maximum sound level limits set forth in Table I when measured on the property line of the affected residential property. These sound level measurements shall be conducted with the sound level meter set for A-weighted measurement.

**TABLE I
MAXIMUM PERMISSIBLE SOUND LEVEL IMMISSIONS**

Week nights 9:00 p.m. - 7:00 a.m. Weekend nights 10:00 p.m. - 9:00 a.m.	All other times
50 dB(A)	65 dB(A)

(g) **Construction, Repairing or Demolition of Buildings.** The creation (including excavating), demolition, alteration or repair of any building within the city, other than between the hours of 7:00 a.m. and 9:00 p.m. on weekdays and between the hours of 9:00 a.m. and 9:00 p.m. on weekends, except in the case of urgent necessity in the interest of public health and

safety, and then only with a permit from the Chief of Police, which permit may be granted for a period up to three days while the emergency continues and which permit may be renewed for periods of three days while the emergency continues.

(h) Pile Drivers and Hammers. The operation within the city, between the hours of 9:00 p.m. and 7:00 a.m. on weekdays and between the hours of 9:00 p.m. and 9:00 a.m. on weekends, of any piledriver, power shovel, pneumatic hammer, derrick or hoist, or other appliance, the use of which is attended by loud or unusual noises.

Sec. 30-46. Exemptions

Sounds caused by the following activities are exempt from the prohibitions set out in Section 30-44 and 30-45. The exemptions in this section are in addition to the exemptions specifically set forth in Section 34-44 and 30-45:

(a) Motor vehicles on traffic ways of the City of Orange Beach, provided that the prohibition of Section 30-45(b) continues to apply.

(b) Repairs to utilities, streets or any structure that pose a clear and immediate danger to life, health, or significant loss of property.

(c) Sirens, whistles, or bells lawfully used by emergency vehicles or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, provided that the prohibition contained in Section 30-45(c) continues to apply.

(d) The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.

(e) Repairs or excavations of bridges, streets or highways by or on behalf of the City of Orange Beach, the state, or federal government, between the hours of 9:00 p.m. and 7:00 a.m. when public welfare and convenience renders it impractical to perform the work between 7:00 a.m. and 9:00 p.m.

(f) Outdoor school and playground activities. Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to, school athletic and school entertainment events.

(g) Trucks, jack hammers, and the operation of other equipment for construction purposes between the hours of 7:00 a.m. and 9:00 p.m. on weekdays and between the hours of 9:00 a.m. and 9:00 p.m. on weekends.

(h) Other outdoor events. Outdoor gatherings, public dances, shows and sporting events, and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority.

(i) Outdoor music venues if in compliance with an active outdoor music venue permit as provided in section 30-47.

Sec. 30-47. Outdoor Music Venue Permit

(a) General Restrictions.

A person may not:

1. Use or permit the use of sound equipment at an outdoor music venue without obtaining a permit.
2. Use or permit the use of sound equipment at an outdoor music venue in excess of the decibel limits prescribed in this chapter.

(b) Restriction on Decibel Level in Residential Neighborhoods. No person shall cause, suffer, allow, or permit the operation of any sound production device in noncompliance with section 30-45 of this ordinance unless an exception is allowed as a condition of the outdoor music permit.

(c) General Provisions. A person must obtain a permit to operate sound equipment at an outdoor music venue as prescribed by this article. The outdoor music venue permit is valid for one calendar year and must be renewed annually.

(d) Application Requirements. A person seeking a permit to operate sound equipment must complete and file a written application for an outdoor music venue permit with the Community Development Department on a form approved by the Department. The application for an outdoor music venue permit must include but not be limited to:

1. The name, address and telephone number of the applicant and operator of the sound equipment;
2. The address and description of the location of the property where the sound equipment will be used;
3. The time and days of the week during which the sound equipment will be used;
4. A sketch providing the layout of the venue and the surrounding property land uses.
5. The proposed hours of amplified sound;
6. The outdoor venue size and capacity; and
7. The type of liquor license, if applicable.

(e) Permit Issuance. The Community Development Department will have the authority to approve or deny an outdoor music venue permit application based on the following criteria:

1. Proximity of the proposed outdoor music venue to existing land uses and zoning districts, including consideration of the date which the venue was originally permitted relative to surrounding land uses and zoning districts;
2. The size and capacity of the outdoor music venue;
3. Sound mitigation to be provided by the operator of the outdoor music venue, including but not limited to building design, landscaping and buffering;
4. The hours and days of the week during which sound equipment will be operated;
5. Sound propagation over existing or proposed surface water bodies;
6. The history of noise complaints regarding the outdoor music venue as verified by the Chief of Police or the City Administrator.

The Community Development Department may refer an outdoor music venue permit application to the City Council for a determination of whether such permit should or should not be issued. The City Council may exceed the limits provided in section 30-45 if it is determined that the venue will not cause negative impacts on surrounding residential or hotel land uses. The City Council may mitigate adverse negative impacts by imposing conditions deemed necessary to protect the health and safety of single family, multi-family and hotel land uses in the vicinity of the proposed music venue.

(f) Denial or Revocation of Permit for Repeated Offenses

The City Council may revoke an existing permit or refuse to issue or renew a permit to a permittee if there is a history of noise complaints associated with the site upon which the outdoor music venue is or will be located.

Sec. 30-48. Enforcement

(a) The Police Chief will have the primary responsibility for the enforcement of the noise regulations contained herein. Nothing in this ordinance shall prevent the Police Chief from obtaining voluntary compliance by way of warning, notice or education.

(b) If a person's conduct would otherwise violate this ordinance and consists of speech or communication; of a gathering with others to hear or observe speech or communication; or of a gathering with others to picket or otherwise express in a non-violent manner a position on social, economic, political or religious questions; the person must be ordered to and have the opportunity to move, disperse, or otherwise remedy the violation prior to arrest or a citation being issued.

Sec. 30-49. Penalties

(a) Any person who violates a provision of this ordinance is guilty of a misdemeanor which is punishable by a fine not to exceed \$500.00 or imprisonment not to exceed sixty (60) days or both.

(b) Each occurrence of a violation or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.

(c) In addition to the foregoing, the City may institute a civil action in the Circuit Court to restrain and enjoin any conduct that constitutes a public nuisance.


SECTION 2. SEVERABILITY CLAUSE

A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part, of this ordinance shall not affect the validity of the remaining parts to this ordinance.


SECTION 3. EFFECTIVE DATE

This ordinance will become effective upon adoption and publication as required by law.

ADOPTED this the 3rd day of May, 2016


Cathy Constantino, MMC
City Clerk

The City Clerk of the City of Orange Beach, Alabama hereby certifies that the foregoing Ordinance 2016-1227 was posted on 05/26/16 in the following three (3) public places:
Orange Beach City Hall _____
Orange Beach Post Office _____
Orange Beach Public Library _____


Cathy Constantino, City Clerk