

ORDINANCE NUMBER 2310

AN ORDINANCE AMENDING ORDINANCE NUMBER 1738, AS AMENDED - AN ORDINANCE TO MAKE IT UNLAWFUL FOR ANY PERSON TO MAKE; CONTINUE OR CAUSE TO BE MADE OR CONTINUED ANY LOUD OR EXCESSIVE NOISE WHICH UNREASONABLY INTERFERES WITH THE COMFORT, HEALTH OR SAFETY OF OTHERS WITHIN THE JURISDICTION OF THE CITY OF VESTAVIA HILLS, ALABAMA AND TO PRESCRIBE PENALTIES AND FINES FOR VIOLATION THEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

Section 1: Short Title: This Ordinance amends Ordinance Number 1738, as amended by Ordinance Number 2100, in its entirety and may be cited as the "Noise Control Ordinance".

Section 2: Authority: This Noise Control Ordinance is approved and adopted by the Vestavia Hills, Alabama in the exercise of its general police powers under the laws of the State of Alabama, specifically including but not limited to Title 11-45-1, et seq., Code of Alabama, 1975.

Section 3: Purpose: This ordinance is enacted to protect, preserve and promote the health, safety, welfare, peace and quiet for the citizens of Vestavia Hills, Alabama through the reduction, control and prevention of excessive sound or other noise. It is the intent of this Ordinance to establish standards that will eliminate and reduce unnecessary and excessive community sounds or other unreasonable noises which are physically harmful and otherwise detrimental to individuals and the community in the enjoyment of life, property and conduct of business.

Section 4: Definitions: All technical terminology used in this Ordinance shall, for the purpose of this ordinance, have the meanings hereinafter ascribed to them.

- A. "City" means The City of Vestavia Hills, Alabama.
- B. "Commercial Area" means any area designated for commercial uses under the Zoning Ordinance of the City.
- C. "Construction" means any site preparation, assembly, erection, substantial repair, alteration or similar action, but excluding demolition.

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

E. "Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

F. "Emergency Work" means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

G. "Impulsive Sound" means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts and the discharge of firearms.

H. "Motor Vehicle" means any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semitrailers, campers, go-carts, snowmobiles, amphibious craft on land, dune buggies or racing vehicles, but not including motorcycles.

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

J. "Muffler or Sound Dissipative Device" means a device for abating the sound of escaping gasses of an internal combustion engine.

K. "Noise" means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

L. "Noise Disturbance" means any sound which endangers or injures the safety or health of humans or animals, or annoys or disturbs a reasonable person of normal sensitivities, or endangers or injures personal or real property.

M. "Person" means any individual, association, partnership, corporation or other legal entity.

N. "Powered Model Vehicle" means any 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.

O. "Public Right-of-Way" means any street, avenue, boulevard, highway,

sidewalk or alley or similar place which is owned or controlled by a governmental entity.

P. "Public Space" means any real property or structures thereon which are owned or controlled by a governmental entity.

Q. "Real Property Boundary" means a line along the ground surface and its vertical extension which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

R. "Residential Area" means an area designated for any residential use under the Zoning Ordinance of the City.

Section 5: Scope: It shall be unlawful and a nuisance for any person to make, continue or cause to be made or continued any loud, unreasonably loud, disturbing, unnecessary or excessive noise which unreasonably interferes with the comfort, health or safety of others within the jurisdiction of the City of Vestavia Hills, Alabama. It shall also be unlawful and a nuisance for any person to permit any such noise to be made in or upon any house or premises owned or possessed by him or under his management or control.

Section 6: Specific Violations: In addition to the general prohibition set out above, the following specific acts, among others, are declared to be loud, disturbing or unnecessary noises and are declared to be in violation of this ordinance; provided, however, that such enumeration shall not be deemed to be exclusive. It is hereby declared a nuisance and shall be unlawful:

A. Music In Motor Vehicles and Pedestrians:

(1) To operate or play any radio, musical instrument or similar device whether from a motor vehicle or by a pedestrian in such a manner as to be plainly audible to any person other than the player or operator of the device at a distance of thirty feet (30') in the case of a motor vehicle or thirty feet (30') in the case of a pedestrian.

B. Electronic Devices and Musical Instruments:

(1) To operate or play any radio, television, phonograph, musical instrument or similar device which produces or reproduces sound whether from a business, residence or other premises in such a manner as to be plainly audible at a distance of thirty feet (30') to any person in a commercial, residential, multi-family dwelling, professional office building, institutional or public place.

(2) Anything contained in this ordinance to the contrary notwithstanding, it is further provided that it is hereby declared a nuisance and shall be unlawful to operate or play any radio, television, musical instrument or similar device or to produce live music, sound or noise in any manner which produces or reproduces sound or noise, whether from a business, residence or any other premises, in such manner as to be plainly audible outside of the real property boundary of such business, residence or other premises between the hours of 10 o'clock p.m. and the following morning at 7 o'clock a.m.

(3) Anything contained in this ordinance to the contrary notwithstanding, it is further provided that it is hereby declared a nuisance for any person, firm or corporation to operate or play any radio, musical instrument or similar device or to generate live music, noise or sound, whether from a motor vehicle, a pedestrian or from a commercial or residential premise which may, between the hours of 10 o'clock p.m. and the following morning at 7 o'clock a.m. be heard in such manner as to be plainly audible to any person other than the player or operator of the device, or the provider of said music, or the persons located on the premises from which said music, sound or noise emanates.

(4) Anything contained in this ordinance to the contrary notwithstanding, it is further provided that no person, firm or corporation shall transmit or allow to be transmitted any live or electronically produced music or other sound on any property at a sound level which is detectable by the normal unaided human ear beyond the real property boundary of the person, firm, or corporation upon whose property said sound or other noise is emanating from.

C. Blowing Horns: To sound any horn or signal device on any automobile, motorcycle, bus or other vehicle, except as a danger signal when and as required by ordinances of the city or by the Code of Alabama; to create by means of any such signal device of any unreasonable, loud or harsh sound; and the sounding of such device for an unnecessary or unreasonable period of time. The provisions of this section regulating the sounding of a horn or signal device on vehicles shall not apply to authorized emergency vehicles while the driver of such vehicle is operating the same in an emergency in the necessary performance of public duties, and when the sounding of

such horn or signal device is made as a warning or danger signal.

D. Unmuffled Engine Exhausts: To discharge into the open air the exhaust of any steam engine, stationary internal combustion engine, motor vehicle or motor boat engine, except through a muffler or other device which will effectively prevent the emission of loud or explosive noises therefrom. No person shall operate a motor vehicle which causes excessive noise levels as a result of a defective or modified exhaust system or as a result of an unnecessary rapid acceleration, deceleration, engine revving or tire squealing.

E. Peddlers, Etc.: To shout or cry by peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.

F. Fireworks: To explode firecrackers, skyrocket, Roman candles, pinwheels or any other form of fireworks, except the display of fireworks in public parks or other open places within the city under a permit issued by the state fire marshal, pursuant to the fire prevention code of the city.

G. Use of Noisemakers for Advertising Purposes: To use any drum, pan, pail, bell, horn, trumpet, loudspeaker or other instrument or device for the purpose of attracting attention or intended to attract attention to any performance, show or sale or display of merchandise, or for any other advertising purposes; provided, that the provisions of this subsection (H) shall not apply to any type of carillon which is located in or on any premises in the city and is played, operated or sounded so as to cause music or musical notes or a time strike to emanate from such carillon or from amplifiers attached thereto and located in or on the same premises.

H. Calliopes or Amplifiers on Vehicles: To use calliopes, mechanical loudspeakers or amplifiers on any vehicles used for advertising or other purposes, except when a permit for such use over a specified route is issued by the Mayor and except within the times specified in the permit.

I. Disorderly or Unruly Conduct: A person violates this ordinance if, with intent to cause public inconvenience, annoyance or alarm, recklessly creating a risk thereof, he or she makes unreasonable noise.

J. Loading and Unloading: To load, unload, open, close or other handling of boxes, crates, containers, building materials, garbage cans or similar objects

between the hours of 10 o'clock p.m. and 7 o'clock a.m. the following day in such a manner as to cause a noise disturbance across a residential real property boundary.

K. Construction: To operate or permit the operation of any tools or equipment used in construction, drilling or demolition work between the hours of 10 o'clock p.m. and 7 o'clock a.m. the following day on weekdays or at any time on weekends or holidays, such that the sound therefrom creates a noise disturbance across a residential real property boundary, except for emergency work or public service utilities.

M. Powered Model Vehicles: To operate or permit the operation of powered model vehicles so as to create a noise disturbance across a residential real property boundary, in a public space or within a noise sensitive zone between the hours of 10 o'clock p.m. and 7 o'clock a.m. the following day.

N. Stationary Non-emergency Signaling Devices:

(1) To sound or permit the sounding of any signal from any stationary bell, chime, siren, whistle or similar device, intended primarily for non-emergency purposes, from any place, for more than one minute in any hourly period.

(2) Devices used in conjunction with a place of religious worship and educational institutions shall be exempt from the operation of this provision.

O. Domestic Power Tools: To operate or permit the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, snowblower or similar device used outdoors in residential areas between the hours of 10 o'clock p.m. and 7 o'clock a.m. the following day so as to cause a noise disturbance across a residential real property boundary.

Section 7: Exceptions: Nothing in this ordinance shall be construed to prohibit:

A. Special performances by a band or orchestra in a hall, building or in the open air after proper permits have been obtained from the Mayor.

B. The ringing of bells or chimes by churches within the city.

C. Any noises or sounds produced by radios, sirens or other equipment attached to, or being operated by, any police, fire, rescue or other emergency vehicles or personnel.

D. The conducting of live remote broadcasts by duly licensed radio

stations, upon business premises, at the request of the owner of the business. Said live broadcasts shall be limited to daylight hours only.

E. Organized school-related programs, activities and other events are exempt from the terms and provisions of this ordinance.

F. Organized public programs, activities and events and parades or other public programs, activities or events authorized by the Mayor are exempt from the terms and provisions of this ordinance.

Section 8: Fines and Punishment: Any person, firm or corporation violating any of the said terms and provision of this Ordinance shall, upon conviction, be punished in accordance with Title 11-45-9, Code of Alabama, 1975, for a misdemeanor violation for each such offense. Each day any violation of this ordinance shall continue shall constitute a separate offense.

Section 9: Summons and Complaint In Lieu of Arrest Warrant: Pursuant to Act 92 588, of the State of Alabama, codified as Section 11-45-9.1 in the Code of Alabama, 1975, as amended, which authorizes municipalities to issue Summons and Complaints in lieu of arrest warrants for violation of certain municipal ordinances:

A. That any law enforcement officer of the City of Vestavia Hills, Alabama may issue a Summons and Complaint to any person charged with committing the offense of nuisance-unreasonable noise, in violation of Noise Control Ordinance Number 2310 of the City of Vestavia Hills, Alabama and release such person from custody upon his or her written promise to appear in court at the designated time and place as evidenced by his or her signature on the Summons and Complaint.

B. The attached Summons and Complaint form is hereby approved.

C. Anyone charged with this offense may elect to appear before the Municipal Court Magistrate within the time specified in the Summons and Complaint, and upon entering a plea of guilty and executing a Notice and Waiver of Rights form, pay a minimum fine of One Hundred Dollars (\$100.00) plus court costs or may pay the fine and court costs by mail.

Section 10: Variances and Exceptions:

A. The Mayor or his designated representative shall have the authority, consistent with this ordinance, to grant special variances and/or exceptions.

B. Any person seeking a special variance and/or exception pursuant to this ordinance shall file an application with the Mayor or his designated representative. The application shall contain information regarding the date, time and place where the special variance and/or exception is desired or needed. The applicant shall also include in the application a full and detailed explanation as to why such special variance and/or exception is wanted and/or needed.

C. The special variance and/or exception may be granted by the Mayor or his designated representative by notice to applicant in writing containing all necessary conditions including a time limit on the permitted activity. The special variance and/or exception shall not become effective until all conditions are agreed to by the applicant. Noncompliance of any condition of the special variance and/or exception shall terminate it and subject the person holding it to those provisions of this ordinance regulating the source of sound or activity for which the special variance and/or exception was granted.

Section 11: Severability: If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance which shall continue in full force and effect notwithstanding such holding.

Section 12: Effective Date: The provision of the ordinance shall become effective immediately upon the passage and approval thereof by the City Council of the City of Vestavia Hills, Alabama and the publication and/or posting thereof as required by Alabama law.

DONE, ORDERED, APPROVED and ADOPTED this the 23rd day of November, 2009.

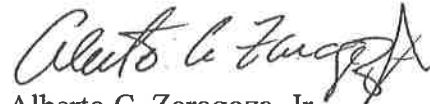


David Carrington
Council President

ATTESTED BY:


Rebecca Leavings
City Clerk


APPROVED BY:


Alberto C. Zaragoza, Jr.
Mayor

CERTIFICATION:

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 2310 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 23rd day of November, 2009, as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Public Library, and Vestavia Hills Recreational Center this the 15th day of December, 2009.


Rebecca Leavings
City Clerk