

ORDINANCE NO. 1797

AN ORDINANCE AMENDING CHAPTER 7.26, NOISE POLLUTION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS:

SECTION 1. Deleting the language of 7.26 and replacing it with new language hereby amends that Chapter 7.26 of the Municipal Code of Eureka Springs.

7.26.01. Definitions. As used in this ordinance, the words and terms shall have the following meanings unless text clearly indicates otherwise.

1. The terms loudspeaker, sound amplifier or similar device shall mean any apparatus for the amplification of sounds from any person, radio, phonograph, tape player, CD player, television set, band, orchestra or any other sound-making or sound-producing device including any apparatus for the amplification of the human voice.
2. "Ambient Sound Level" is the total sound pressure in the area of interest including the source of interest.
3. "A-Weighting" is the electronic filtering in sound level meters that models human frequency sensitivity.
4. "Background Sound Level" is the total sound pressure in the area of interest excluding the noise source of interest.
5. "C-Weighting" is the electronic filtering in sound level meters that models a flat response (output equals input) over the range of maximum human hearing frequency sensitivity.
6. "dBA" is the A-weighted unit of sound pressure level.
7. "dBC" is the C-weighted unit of sound pressure level.
8. "Decibel (dB)" is the unit for measurement for sound pressure level at a specified location.
9. "Jake" brake is a system utilized on many large diesel-powered vehicles such as dump trucks and semi-truck tractors, which causes the engine to reduce the speed of the vehicle instead of using the standard braking system.
10. "Noise Control Administrator" (NCA) is the City Clerk who is designated as the official liaison with all municipal departments and empowered to grant permits for operation and variances under this ordinance.
11. "Noise Control Officer"(NCO) is a person officially designated by the Chief Of Police trained in the measurement of sound and empowered to issue a summons for violations of this ordinance.
12. Permitted business is a business having an amplified sound permit.
13. "Plainly Audible" means any sound that can be detected by a person using his or her unaided hearing facilities. When music is involved, the detection of the rhythmic bass is sufficient to verify plainly audible sound.

14 "Real Property Line" is either (a) the imaginary line, including its vertical extension to any height within the jurisdiction of the City Of Eureka Springs, that separates one parcel of land from another or, (b) the vertical and horizontal boundaries of a dwelling unit that is one in a multi-dwelling unit building.

15. "Receiving Property" is the property at which the sound is being heard, i.e.: the source of the complaint.

16. "Sound Level" is the instantaneous sound pressure level measured in decibels with a sound level meter set for A-weighting on slow integration speed, unless otherwise noted.

17. "Sound Level Meter (SLM)" is an instrument used to measure sound pressure levels conforming to Type 1 or Type 2 standards as specified in ANSI Standard S1.4-1983 or the latest version thereof.

18. " Sound Pressure Level (SPL)" is 20 multiplied by the logarithm, to the base of 10, of the measured sound pressure divided by the sound pressure associated with the threshold of human hearing, in units of decibels.

19. "Sound Truck" is a personal or commercial vehicle equipped with music or voice amplification or reproduction equipment for the purposes of broadcasting sound beyond the confines of the vehicle.

20. "Zoned Areas" are those areas appearing on the official zoning map of the City of Eureka Springs and identified as being classified as zoned.

7.26.02. Departmental Cooperation

All city departments and agencies will cooperate with the NCA in administering and enforcing this ordinance.

7.26.03 Restrictions on Amplified Sounds.

1. Commercially Zoned Areas. No person shall operate or allow to be operated any "loudspeaker", "sound amplifier" or "similar device" from which sound emanates, out-of-doors in a commercially zoned area, with the exception of those businesses having a restaurant license and outdoor seating. However, amplified sound in permitted businesses will not exceed a sound level of 10dB over the background sound level in those businesses at any time.

No person shall operate or cause to operate any sound amplifier or similar device **indoors** in such a manner that the sound produced is projected beyond the perimeter of property on which the sound is produced at a sound level of more than 65 decibels, as measured by an SLM.

2. When a complaint is lodged against a permitted business and measurements taken, in no case shall the decibel level be more than 10 dB above the background noise level of the receiving property.

3. Residential Areas. Businesses having a restaurant license and outdoor seating that operate in an area zoned Residential or Quiet Zone shall have a restriction on sound produced of a sound level of 60 decibels and in no case shall the sound produced exceed more than 10 decibels above the background noise level of the real property during hours of operation.
4. Businesses having a restaurant license and outdoor seating shall obtain a permit for sound amplification from the Eureka Springs City Clerk before operating sound amplification equipment permitted under this ordinance.
5. The only sounds permitted to be amplified under this ordinance are music and the human voice.

7.26.04. Issuance of Permit for Amplified Sound

1. No permit shall be issued to any qualifying business for the amplification of sound unless it is determined by the City Clerk that said business is complying with all the laws and licensing procedures regulating that business including the payment of all taxes and fees due.
2. No permit shall be issued if applicant has had their permit rescinded within the last two years for three violations of the noise ordinance.
3. Permit shall be issued after the payment of permit fee set forth in the schedule of fees established by resolution of the City Council.
4. The permit shall be issued in the name of the persons who hold the business license and the local liquor license for the establishment. These persons shall be responsible for seeing that the conditions of the permit are adhered to and shall be accountable for any fines assessed.
5. Permits shall be issued for a period of one year and shall be non-transferable.

7.26.05. Hours of Operation

No amplified sound will be permitted outdoors between the hours of 10:00p.m. and 8:00a.m.

7.26.06. Special Events and Other Occasions

1. The City Council may, from time to time, issue special permits allowing the production of amplified sound beyond the parameters of this ordinance for festivals and special events.
2. The City Council may, from time to time, issue a special permit beyond the parameters of this ordinance for sound amplification outdoors in a residential area when said sound might be audible beyond the property line. Such occasions as weddings, parties and receptions would be acceptable under this ordinance. In no case shall the permit extend the hours beyond 10:00p.m. in a residential area.
3. The name of the person who will be responsible for seeing that the conditions of the special permit are adhered to shall be listed on the

permit and that person shall be held accountable for any violations of that permit.

7.26.07. Limitations of Amplified Sound from Vehicles.

1. No sound trucks shall be operated within the city limits of Eureka Springs except in an emergency declared by the Chief of Police.
2. It shall be unlawful for any person to use, operate or permit to be played any portable sound generating device within the confines of a vehicle when such sound produced by those devices shall be plainly audible beyond twenty feet of said vehicle.

7.26.08. Restrictions on Noise Pollution

No person shall cause, permit or contract to be caused or permitted on premises public or private, any identifiable source of sound, sustained or intermittent, that is more than 5 decibels above the background noise level in the area of interest. This does not apply to amplified sound covered elsewhere in this ordinance. When a situation exists wherein the NCO determines measurements are not practical and the sound is judged clearly a nuisance, the officer will first issue a warning and for the second complaint issue a citation carrying a fine as defined in 7.26.12 (2.).

7.26.09. Restrictions on "Jake" Brakes

The use of "Jake" brakes shall not be permitted within the city limits of Eureka Springs.

7.26.10 Exceptions

1. Persons involved in the repair and maintenance of vital public utilities and city streets shall be exempt from the maximum allowable decibel level of sound generation.
 - A. A person who has been issued a building permit for repair, construction or maintenance in accordance with the building permit between the hours of 7:00a.m. and 6:00p.m. Monday through Friday.
 - B. Nothing in this ordinance shall apply to the employees of the city, the county, the state, the United States of America or any official government entity when such amplification of sounds being used by such officer or employee while engaged in his official duties.

7.26.11. Procedure for Measurement

1. Insofar as practicable, sound will be measured while the source under investigation is operating at normal, routine conditions.
2. All tests shall be conducted according to the following procedures:
 - a. When the measurement procedure is the result of a complaint, measurements will be taken at the property line of the receiving property.

- b. When the measurement procedure is in the normal course of monitoring amplified sound, the measurements will be taken at the real property line.
- c. The SLM must be calibrated using a calibrator recommended by the SLM manufacturer before and after each series of readings.
- d. No outdoor measurements shall be taken:
 1. while winds exceed (including gusts) 15 mph. without a windscreen recommended by the manufacturer attached to the SLM.
 2. Under conditions that will allow the SLM to become wet.
 3. When the ambient temperature is out of range of tolerance of the SLM.
- e. The report for each measurement session shall include:
 1. The day, date and time of the measurement.
 2. Time of calibration
 3. Weather conditions
 4. Identification of the monitoring equipment.
 5. Location and description of the source.
 6. Background sound level.
- f. The SLM shall be set for A-weighting, slow meter response speed and shall be set to the range in which the meter reads closest to the maximum end of the scale. Both minimum and maximum levels will be recorded.
- g. The SLM shall be placed a minimum of three feet above the ground or from any reflective surface.
- h. If there are extraneous sound sources that are unrelated to the measurements and increase the monitored sound level, the measurement shall be postponed until these noises subside.
- i. Testing period shall be of sufficient duration to allow the NCO to obtain a clear and accurate measurement using the SLM.

7.26.12. Sound Level Limitations

No person shall produce or cause to be produced any level of amplified sound on any property within the limits of The City Of Eureka Springs that exceeds the background level of sound by 10dBA when measured within the real property line of the receiving property, except as provided in 7.26.03. If the background sound level cannot be determined then the absolute limits of sound shall be 65 dBA in commercial areas and 60dBA in residential areas.

7.26.13 Penalties for Violation.

1. The first offense within one year shall carry a fine of not less than fifty (\$50) or more than two hundred and fifty (\$250) dollars.
2. The second offense shall carry a fine of not less than one hundred (\$100) or more than five hundred (\$500) dollars.

3. Conviction of any subsequent offense shall carry a fine of not less than five hundred (\$500) or more than one thousand (\$1,000) dollars and shall result in the revocation of the sound amplification permit, if applicable.

SECTION 2.

1. If a court of competent jurisdiction finds any part of this ordinance unenforceable for any reason it shall not affect the remaining parts thereof.
2. If any provision or portion of a provision of this ordinance is held to be unconstitutional, preempted by Federal or State law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

SECTION 4. The City Council hereby determines that the immediate enforcement by city police of the sound violations is necessary for the city to protect residents currently disturbed by sound violations interfering with their rest and potentially harmful to their health and well being, both mental and physical. It is furthermore determined that reasonable persons are entitled to protection from annoyances and disturbances. Therefore, an emergency is declared to exist and this ordinance, being necessary for the public health, safety and welfare shall be fully in force and effect after its passage, approval and public notification according to law.

PASSED this 27th day of October 1998.

APPROVED:

Barbara O'Harris

Barbara O'Harris, Mayor

ATTEST;

Wendy Ann Lee
City Clerk