

ORDINANCE NO. 1972

AN ORDINANCE AMENDING CHAPTER 42, ARTICLE II, NOISE POLLUTION OF THE EUREKA SPRINGS MUNICIPAL CODE

WHEREAS, the City Council has determined that the existing Eureka Springs Municipal Code pertaining to Noise Pollution is not clear in its meaning and is in need of clarification.

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

Section 1. That Eureka Springs Municipal Code, Chapter 42, Section 31 shall be amended to include the following definition:

Permitted outdoor seating means outdoor seating, for the purpose of serving meals and/or alcoholic beverages, which is contiguous to the business structure and has been approved by the Arkansas Department of Health and/or the Arkansas Alcoholic Beverage Commission and the City of Eureka Springs.

Section 2. That Eureka Springs Municipal Code, Chapter 42, Section 34 shall be amended to read as follows:

Sec. 42-34 Restrictions on amplified sounds.

(a) *Commercially zoned areas*

- (1) 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, permitted outdoor seating and an amplified sound permit. However, amplified sound emanating from permitted businesses will not exceed 65 dB as measured by a SLM.
- (2) No person shall operate or cause to be operated, any sound amplifier or similar device indoors in such a manner that the sound produced is projected beyond the perimeter of the property on which the sound is produced at a sound level of more than 65 dB, as measured by a SLM.

(b) *Residential zoned areas.*

- (1) Under no circumstances shall amplified sound exceed 60 dB as measured by a SLM in a residential area.

- (2) Businesses having a restaurant license and permitted outdoor seating that operate in an area zoned residential or quiet zone shall have a restriction on sound produced which shall not exceed 60 dB.

(c) *Annual Permit required.*

Businesses having a restaurant license and permitted outdoor seating shall obtain a permit for sound amplification from the Mayor or City Clerk before operating sound amplification equipment under this article. The only sounds which may be amplified under this article are music and the human voice.

Section 3. That Eureka Springs Municipal Code, Chapter 42, Section 35 shall be amended to read as follows:

Sec. 42-35. Issuance of annual permit and conditions for amplified sound.

- (a) No permit shall be issued to any qualifying business for the amplification of sound unless it is determined by the Mayor or City Clerk that the business is complying with all the laws and licensing procedures regulating that business, including the payment of all taxes and fees due.
- (b) No permit shall be issued if applicant has had their permit rescinded within the last two years for three violations of this article.
- (c) A permit shall be issued after the payment of the permit fee set forth in the schedule of fees established by resolution of the City Council.
- (d) 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.
- (e) Permits shall be issued for a period of one year and shall be nontransferable. (Ord. No. 1797, ss 1, 10-27-1998)
- (f) The permit fee for annual amplified sound permits is established at \$50.00.
- (g) The annual period for which an amplified noise permit is issued is from July 1st to June 30th, annually.

Section 4. That Eureka Springs Municipal Code, Chapter 42, Section 35.5 shall be deleted.

Section 5. That Eureka Springs Municipal Code Chapter 42, Section 37 shall be amended to read as follows:

Sec. 42-37. Special events and other occasions.

- (a) The Mayor or City Clerk may issue special permits allowing the production of amplified sound in commercially zoned districts to be extended until 2:00 a.m. and at a level not to exceed 85 dB for festivals and special events.
- (b) The city council may issue a special permit beyond the parameters of this article for sound amplification outdoors in a residential area when the sound might be audible beyond the property line. Such occasions as weddings, parties and receptions would be acceptable under this article. In no case shall the permit extend the hours beyond 10:00 p.m. in a residential area.
- (c) 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.
- (d) The permit fee for all other permits authorized in this article, other than the annual permit fee, is established at \$25.00 (Res. No. 459 ss. 1, 2, 5-20-1999)
- (e) The duration of a special permit is one calendar day, from midnight to midnight except as permitted in Section (a) and/or except for officially recognized festivals sponsored by the city when a permit may be issued for the duration of the festival for performances on property owned and maintained by the city.
(Ord. No. 1797, ss. 1, 10-27-1998; Res. No. 460, ss.ss. 1-3, 6-3-1999)

Section 6. That Eureka Springs Municipal Code, Chapter 42, Section 39 shall be amended to read as follows:

Sec. 42-39. 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 deemed to be clearly a nuisance and a detriment to public health by the NCO. This does apply to amplified sound covered elsewhere in this article. The officer will first issue a warning and for the second complaint issue a citation carrying a fine as defined in section 42-43. (Ord. No. 1797, ss. 1, 10-27-1998)

Section 7. That all ordinances or resolutions, and parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

Section 8. That each of the provisions of this ordinance is severable and the decision of any court having jurisdiction as to the validity of any provision shall not affect the remaining provisions.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF EUREKA SPRINGS, ARKANSAS THIS _____ DAY OF _____, 2004.

APPROVED:

KATHY HARRISON, Mayor

ATTEST:

MARY JEAN SELL, City Clerk