

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF ERLANGER, IN KENTON COUNTY, KENTUCKY DETERMINING THE STANDARDS FOR NOISE POLLUTION AND ASSESSING PENALTIES AND FINES

WHEREAS, neither the City of Erlanger Nuisance Ordinance nor the City of Erlanger Zoning Code and Subdivision Regulations have any objective standards for noise pollution; and

WHEREAS, the City of Erlanger has the authority to enact ordinances for the public health, safety, and welfare of its citizens; and

WHEREAS, the City of Erlanger believes that the public health, safety, and welfare of citizens of the City of Erlanger will be better served by imposing objective standards for noise pollution; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ERLANGER, IN KENTON COUNTY, KENTUCKY, AS FOLLOWS:

(Strikethrough portions are to be deleted, underlined portions are to be added as required by KRS 83A.060(3))

Section 1.0 DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

"BONA FIDE." Made in good faith, without fraud or deceit, a state of mind consisting in:

- (1) Honesty in belief or purpose;
- (2) Faithfulness to one's duty or obligation;
- (3) Observance of reasonable commercial standards of fair dealing in a given trade or business; or
- (4) Absence of intent to defraud or to seek unconscionable advantage.

"CONSTRUCTION OR DEMOLITION ACTIVITY." The erection (including excavation), demolition, alteration, or repair of any building, structure or roadway, or any utility related construction, for which all necessary and proper governmental permits have been obtained.

"HIGHWAY." Any road, street, avenue, alley, boulevard, lane, court, bridge, viaduct, or trestle, and the approaches to them.

"NOISE." The intensity, frequency, duration, and character of sound or sounds from a source or sources.

"PARKING LOT." Any off-street parking facility for public use, and the approaches to same, whether publicly or privately owned, and shall include, but not be limited to: parks, shopping centers, restaurants, entertainment centers, taverns, car washes, banking or financial institutions, whether publicly or privately owned, operated or controlled.

"PERSON." Any person, firm association, partnership, joint venture, corporation or any private entity of any nature.

"PLAINLY AUDIBLE." Capable of being distinctly heard by a person with normal hearing.

"ROADWAY." That portion of the highway designed for ordinary use for vehicular travel, including the berm, shoulder or any public property adjacent thereto.

“UNREASONABLE PERIOD OF TIME.” A period of time in excess of that necessary to accomplish:

- (1) A danger warning with a horn or other audible signaling device; or
- (2) The preservation or protection of property or the life, safety or welfare of a person or persons by use of an audible signaling device.

“UNREASONABLY LOUD, HARSH, OR EXCESSIVE NOISE.” Any noise plainly audible at a distance of 50 feet from its point of origination or emanation.

“VEHICLE.” Any machine or device in, on, or by which, any person or property is or may be transported or drawn on any highway, roadway or parking lot.

Section 2.0 UNLAWFUL CONDUCT

(A) It shall be unlawful for any person within the city to make, continue, or cause to be made or continued, any excessive, loud, unnecessary, or unusual noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others unless the making and continuing of the noise is necessary for the protection or preservation of property or the life, health, or safety of a person or persons.

(B) The following acts are hereby declared to be loud, disturbing, and unnecessary noises in violation of this chapter, but the enumeration shall not be deemed to be exclusive:

(1) The sounding of any horn or other such audible signaling device on any automobile, motorcycle, or other vehicle on any highway, roadway, parking lot or other public place, except as a danger warning, for an unreasonable period of time;

(2) The use or operation of any radio, stereo, or other machine or device for the producing, reproducing or amplification of sound in any vehicle in such a manner as to create an unreasonably loud, harsh, or excessive noise, that disturbs the peace, quiet, or comfort of others;

(3) The use or operation of, or allowing the use or operation of, any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet, and comfort of others by creating or allowing a louder volume than is necessary for the convenient hearing of the person or persons who are voluntarily in the room, chamber, or vehicle in which any above described machine, device, or musical instrument between the hours of 10:00 p.m. and 7:00 a.m., Sunday through Thursday, and 11:00 p.m. and 7:00 a.m. on Friday and Saturday, in such a manner as to be plainly audible at a distance of 50 feet from the building, structure, or vehicle in which it is located, shall be a prima facie evidence of a violation of this section;

(4) Use or operation of any vehicle on any highway, roadway, or parking lot in such a manner as to produce any unreasonably loud, harsh, or excessive noise, or to discharge into the open air the exhaust of any vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom;

(5) Creation of any unreasonably loud, harsh, or excessive noise in connection with the loading or unloading of any vehicle, or by the operation of any such vehicle;

(6) Use of any mechanical loudspeaker, amplifier, sound system, stereo, or radio on any moving or standing vehicle for advertising, entertainment or any other purpose, in such a manner as to create an unreasonable loud, harsh, or excessive noise.

(C) It shall be unlawful for any person to cause fireworks to be set off or to allow fireworks to be set off on property in which said person has an interest either by ownership or rental between the hours of 10:00 p.m. to 8:00 a.m. Sunday through Thursday or between the hours of 11:00 p.m. to 8:00 a.m. Friday and Saturday. New Year's Eve and the Fourth of July shall be exceptions to the previously enumerated restrictions, whereby fireworks shall be allowed on July 4 between 8:00 a.m. and 11:00 p.m., and, shall be allowed from 11:00 p.m. December 31 through 12:30 a.m. on January 1.

Section 3.0 STANDARDS FOR NOISE POLLUTION.

The standards which shall be considered in determining whether a violation of this chapter exists shall include, but not be limited to, the following:

- (A) The volume of the noise;
- (B) The intensity of the noise;
- (C) Whether the nature of the noise is usual or unusual;
- (D) The volume and intensity of background noise, if any;
- (E) The proximity of the noise to a residential area or place of public accommodation such as a hotel, motel, inn, campground and the like;
- (F) The nature and zoning of the area within which the noise emanates;
- (G) The density of inhabitation of the area within which the noise emanates;
- (H) The time of day or night the noise occurs;
- (I) The duration of the noise; and
- (J) Whether the noise is recurrent, intermittent or constant.

Section 4.0 EXEMPTIONS.

The following uses and activities shall be exempt from this chapter:

- (A) Noises originating or emanating from safety signals, warning devices and emergency pressure relief valves;
- (B) Noises resulting from any authorized emergency vehicle or law enforcement training facilities;
- (C) The operation of any aircraft in conformity with, or pursuant to, Federal law, federal air regulations and/or air traffic control instructions;
- (D) Noises emanating or originating from public recreational facilities for city events;
- (E) Noises originating or emanating from bona fide recreational facilities, bona fide civic organizations, bona fide charitable organizations, or bona fide religious organizations.
- (F) Bona fide school sponsored events.

Section 5.0 ENFORCEMENT.

Any individual who hears "NOISE" as defined in this chapter may report said violation to the Erlanger Police Department.

Section 6.0 PENALTY.

Any person, firm, or corporation found violating any of the provisions of this chapter shall be fined not less than \$50 nor more than \$500.

Section 7.0 PROVISIONS SEVERABLE

The provisions of this ordinance are severable; and the invalidity of any provision of this ordinance shall not affect the validity of any other provision thereof; and such other provisions shall remain in full force and effect as long as they remain valid in the absence of those provisions determined to be invalid.

Section 8.0 CONFLICTING ORDINANCES REPEALED

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 9.0 EFFECTIVE DATE

This ordinance shall be effective as soon as possible according to law.

Section 10.0 - PUBLICATION

This ordinance shall be published in summary pursuant to K.R.S. 83A.060.

Adopted this _____ day of _____, 2022.

First Reading- _____, 2022

Second Reading- _____, 2022 Votes Cast: _____ Yes, _____ No

CITY OF ERLANGER

JESSICA FETTE, Mayor

ATTEST:

SHERRY HOFFMAN, Clerk