

ORDINANCE NO. 290

AN ORDINANCE OF THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF MAGEE, MISSISSIPPI REGULATING NOISE WITHIN THE CITY OF MAGEE, MISSISSIPPI

WHEREAS, the Mayor and Board of Aldermen of the City of Magee find that the following ordinance should be adopted to enforce the prohibition of excessive, unnecessary or offensive noise within the city.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Board of Alderman of the City of Magee, Mississippi that the following ordinance is hereby adopted to control and regulate excessive, unnecessary or offensive noise within the City of Magee, Mississippi.

Section 1.

Definitions

For purposes of this ordinance, the following words, terms, and phrases shall have the following meanings:

- (1) *Construction* means any site preparation, assembly, erection, substantial repairs, alterations, or similar action, for or on public or private rights-of-way, structures, utilities, or similar property.
- (2) *Emergency* means any occurrence or set of circumstances involving actual or eminent physical trauma or property damage which demands immediate action.
- (3) *Emergency vehicle* means authorized publicly or privately owned ambulances, or motor vehicles belonging to a fire or police department, or to any federal, state, county, or municipal agency provided said vehicles are in use as emergency vehicles by one authorized to use said vehicles for that purpose.
- (4) *Emergency work* means the use of any machinery, equipment, vehicle, manpower, or other activity in an effort to protect, maintain, provide, or restore safe conditions in the community or for the citizenry, or work by private or public utilities when restoring utility service.
- (5) *Hospital* means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment and care of individuals suffering from physical or mental infirmity, illness, disease, injury or deformity, whether or not any such place be organized or operated for profit and whether any such place be publicly or privately owned. The term Hospital includes facilities providing hospice care. Without limitation, "hospital" does not include convalescent or boarding homes, homes for the aged or other like establishments where room and board only are provided, nor does it include offices or clinics where patients are not regularly kept as bed patients or where out-patient care is primarily only provided.
- (6) *Motor vehicle* means any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, buses, street cars, trucks, truck-trailers, semitrailers, campers, go-carts, amphibious craft on land, all terrain vehicles, dune buggies, or racing vehicles, but not including motorcycles.

- (7) *Motorboat* means any vessel which operates on water and which is propelled by a motor, including, but not limited to, boats, barges, amphibious craft, water skis, towing devices, jet skis, bumper boats, and hover craft, but not including racing boats.
- (8) *Motorcycle* means an unenclosed motored-vehicle having a saddle for the use of the operator and two or more wheels in contact with the ground, including, but not limited to, motor scooters and minibikes.
- (9) *Nursing home* has the same definition and meaning as defined in Miss. Code Ann, 73-17- 5(6) (1972), as amended.
- (10) *Person* means any individual, firm, association, partnership, corporation, joint venture, or any entity, public or private in nature.
- (11) *Property boundary* or *property line* means an imaginary line at the ground surface and its vertical extension which separates the real property owned or inhabited by one person from that owned or inhabited by another person, but not including intra-building real property divisions.
- (12) *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 governmental entity.
- (13) *Residence* or *residential area* means a single-family, duplex, or multifamily dwelling or an area having such dwellings, including a mobile home park.
- (14) *Sound equipment* means any equipment, machine, or device used for the production, reproduction or amplification of the human voice, music or any other sound, including, but not limited to, radios, television sets, phonographs, drums, boom boxes, compact disc (or CD) players, musical instruments, cassette tape players or similar devices.

Section 2.

Noises interfering with enjoyment of property or public peace and comfort prohibited. No person shall make or cause to be made any loud and raucous noise in the city which is offensive to the ordinary sensibilities of the inhabitants of the city, which noise renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort.

Section 3.

Specific noises interfering with enjoyment of property or public peace and comfort enumerated. The following acts, among others, are declared to create loud and raucous noises, and shall be deemed a violation of this section, but such enumeration shall not be deemed to be exclusive:

- (1) The sounding of any horn or signal device on any motor vehicle, motorcycle, or motor boat, except as a danger signal, as required by state law.
- (2) The playing or operation of any sound equipment in such a manner, or with such volume as to disturb the peace, quiet, comfort, or repose of persons in any dwelling, apartment, hotel, hospital or other types of residence.
- (3) The keeping of any fowl or animal which emits or makes unreasonably loud and raucous noise.

- (4) The use of any motor vehicle, motorcycle, or motorboat so out of repair which emits or creates loud, raucous, or rattling noises.
- (5) The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of danger.
- (6) The discharge into the open air of the exhaust of any stationary steam engine, stationary internal combustion engine, or motor boat engine, except through a muffler, or other device which will effectively and efficiently prevent loud and raucous noises.
- (7) The discharge into the open air of the exhaust from any motor vehicle, motorcycle, or motorboat except through a muffler, or other device, which will effectively and efficiently prevent loud and raucous noises.
- (8) The construction, including excavation, demolition, alteration, or repair of any structure or building in or adjacent to a residential area other than between the hours of 7:00 a.m. and 9:00 p.m. on weekdays, except in the case of urgent necessity in the interest of public safety, for which a permit must be obtained from the chief of police in accordance with the provisions of this ordinance.
- (9) The creation of loud and raucous noise on any street or property adjacent to any school, church, public library, or court which is in session or adjacent to any hospital; provided, that a conspicuous sign is located in or near such street or property indicating or designating that whatever the establishment or building at issue, be it a school, church, public library, court, or hospital, is adjacent thereto.
- (10) The shouting and crying of peddlers, hawkers, and vendors which disturbs the quiet and peace of the neighborhood.
- (11) The use of any drum or other instrument or sound equipment for the purpose of attracting attention by the creation of noise, to any performance, show, sale, or display of merchandise as to attract customers to any place of business.
- (12) The use of mechanical loudspeakers or sound equipment on or in motor vehicles or motorcycles for the purpose of advertising any show sale, or display of merchandise.
- (13) The use of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, leaf blower, or similar device used outdoors in residential areas or areas immediately adjacent thereto between 9:00 p.m. and 7:00 a.m.

Section 4.

Presumption.

Whenever a violation of this section occurs involving a motor vehicle or motorcycle, it is presumed that the registered owner of the motor vehicle or motorcycle for which the citation is issued is the person who committed the violation, either personally or through an agent or employee. Proof of ownership may be made by a computer generated record of the registration of the vehicle with the Mississippi Department of Motor Vehicles showing the name of the person to whom the state license plates were issued. This proof is prima facie evidence of the ownership of the motor vehicle or motorcycle by the person to whom the certificate of registration was issued.

Section 5.

Use of bell, siren, compression, or exhaust whistle on motor vehicles, motorcycles, and motorboats. Except as specifically authorized or permitted elsewhere in this section, no person shall use upon a motor vehicle, motorcycle, or motorboat any bell, siren, compression or exhaust whistle, except that motor vehicles, motorcycles, and motorboats operated in the performance of any emergency work or in the performance of any duty by law enforcement officers, fire department, and ambulances may attach and use a bell, siren, compression or exhaust whistle.

Section 6.

Sound equipment.

- (1) A person commits an offense of this chapter if he or she operates or causes to be operated any sound equipment in a public place including, but not limited to, any public right-of-way, sidewalk, street, alley, or highway of the city in violation of any of the following limitations and requirements:
 - a. No sound equipment may be operated within one hundred fifty (150) feet of the property line of the premises of a residence, except between the hours of 9:00 a.m. and 11:00 p.m.
 - b. Sound equipment may not emit loud and raucous noises so as to interfere with the enjoyment of life or property or to interfere with public peace and comfort.
 - c. Sound equipment must be operated so as not to cause traffic congestion or congregation of crowds that obstructs any public sidewalk, street, alley, or highway.
 - d. The sounds or noise produced, reproduced, or amplified by sound equipment shall not be obscene or use obscene, indecent, or profane language.
 - e. Sound equipment may not be operated within one hundred fifty (150) feet of any:
 - i. Hospital;
 - ii. School that is in session;
 - iii. Church that is in use or session;
 - iv. Nursing home; or
 - v. Public library, during its hours of operation.

- (2) If conduct that would otherwise violate this section consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in nonviolent manner a position on social, economic, political, or religious questions, the person must be ordered to move, disperse, or otherwise remedy the violation prior to arrest or citation. It is the intent of the City of Magee that this ordinance not be enforced in a manner to violate any constitutional rights related to the exercise of free speech or free expression.
- (3) The order required by the preceding subsection may be given by a peace or police officer, a firefighter, a person with authority to control the use of the premises, or any person directly affected by the violation.
- (4) It is a defense to prosecution under this ordinance that:
 - a. In circumstances in which this section requires an order, no order was given;
 - b. An order, if given, was manifestly unreasonable in scope;
 - c. An order, if given, was promptly obeyed;
 - d. The sound equipment was operated in a public place within an enclosed structure and was not audible beyond the property line of the premises on which it was located;
 - e. The person operating the sound equipment was a law enforcement officer or member of the fire department in the performance of official duties;
 - f. The sound equipment was operated for the purpose of alerting persons to the existence of an emergency or danger; or
 - g. The sound equipment was operated in the performance of emergency work necessary to restore public utilities, to restore property to a safe condition, or to protect persons or property from imminent danger, following a fire, accident or natural disaster.

Section 7.

Exemptions.

The following are exempt from the provisions of this section:

- (1) Domestic power tools, lawn mowers, and agricultural equipment between the hours of 7:00 a.m. and 9:00 p.m.
- (2) Noises or sounds resulting from any authorized emergency vehicles when responding to an emergency.
- (3) Safety signals and alarm devices, storm warning sirens or horns, and the authorized testing_of such equipment.

- (4) Noises or sounds made during a parade or concert sponsored by the city, or for which a permit has been granted by the city.
- (5) Noises or sounds resulting from activities of a temporary duration, for which a special permit or variance has been granted, and which conforms to the conditions and limits stated thereon.
- (6) Noises or sounds from church bells and chimes.
- (7) Noises from construction and demolition activities for which a building permit has been issued by the city are exempt from this section between the hours of 7:00 a.m. and 9:00 p.m., provided that mufflers on construction equipment shall be maintained.
- (8) Interstate railway locomotives and motor vehicles, aircraft, trucks, or other motor vehicles in interstate commerce, or those which are in all respects operated in accordance with or pursuant to applicable federal laws or regulations.
- (9) Installation and maintenance of public and private utilities.
- (10) Mosquito control operations.
- (11) Public or private school functions which occur on the property of the school or a City recreational facility.
- (12) Federal, state, or local governmental event, festival, fun run, race, fiesta, or concert sponsored, co-sponsored, or permitted by a governmental agency or any agent of the same in the fulfillment of any official duty or activity sanctioned by or on behalf of the governmental agency or entity.
- (13) Any burglar alarm or security device, provided, however, no burglar alarm or security device shall sound for more than a reasonable amount of time after being activated.
- (14) The emission of any sound which was created or produced for the purpose of alerting a person to the existence of an emergency, danger, or attempted crime, which was produced by an authorized emergency vehicle or by emergency work necessary to restore public utilities, or to restore property to a safe condition, or to protect person or property from imminent danger following a fire, accident, or natural disaster.
- (15) Any aircraft operated in conformity with, or pursuant to, a federal law, federal air regulations, and air traffic control instructions and pursuant to and within the duly adopted federal air regulations. Any aircraft operating under technical difficulties in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of any emergency under federal air regulations is also exempt.
- (16) Noises or sounds resulting from lawful fireworks or noisemakers used for celebration of an official holiday as permitted by the ordinances of the City of Magee.

Section 8.

Violations and penalties.

Any person found guilty of violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000.00), or by imprisonment not to exceed ninety (90) days, or both such fine and imprisonment. Each day any violation of this section occurs shall continue shall constitute a separate offense. As an additional remedy, continuing violations of this ordinance are deemed and declared to be a nuisance, and the operation or maintenance of any business, device, instrument, vehicle, or machinery in violation of any provision of this section, or which operation or maintenance exceeds the limitations of this section, may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

Section 9.

Severability

Should any provision of this ordinance be held to be invalid or unenforceable all other provisions shall remain in full force and effect.

Section 10.

Repeal of Prior Ordinances.

All prior ordinances of the City of Magee which are inconsistent with the provisions of this ordinance are hereby repealed.

Section 11.

Effective Date.

This ordinance shall become effective thirty (30) days from and after passage.

ORDAINED, ADOPTED AND APPROVED by the Mayor and Board of Aldermen of the City of Magee, Mississippi at its regular meeting held on the 18th day of July, 2023.


A MOTION made to adopt the foregoing Ordinance was made by Alderman Grubbs and SECONDED by Alderman Tebo and the foregoing having first been reduced to writing, was submitted to a Roll Call Vote, the result was as follows:

	Yea	Nay
Alderman Honea	X	_____
Alderman Grubbs	X	_____
Alderman Brown	X	_____
Alderman Tebo	X	_____

This Ordinance having received the affirmative vote of a majority of the Board of Aldermen of the City of Magee, Mississippi, shall be in force according to its provisions.

SO ORDAINED this the ____ day of July, 2023.


Dale Berry, Mayor

Attest:

Jon Styron, City Clerk