



Legislation Text

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AN ORDINANCE AMENDING CHAPTER 9 "HEALTH AND SAFETY" OF THE CODE OF THE CITY OF FOLEY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FOLEY AS FOLLOWS:

SECTION 1. That Chapter 9 of the Code of the City of Foley is hereby amended by repealing the current Article I in its entirety and replacing it with the following sections:

Chapter 9, Article I - Noise, In General

Section 9-1. Noise, in general.

(a) Intent. It is the intent of the city to endeavor to provide citizens an environment free from such excess sounds or noise as may jeopardize their health, welfare and safety, or degrade the quality of life.

(b) General Prohibition. It shall be unlawful for any person to make, continue, or cause to be made or continued any excessive, unnecessary or unusually loud noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the corporate limits of the city.

Section 9-2. Definitions.

(a) Definitions. For the purposes of this section:

(1) "Construction activities" shall mean any and all activity incidental to the construction, erection, demolition, assembling, altering, installing or equipping of buildings, structures, roads or appurtenances thereto, including land clearing, grading, excavating and filling.

(2) "Construction equipment" shall mean construction activity utilizing and equipment or devices, such as but not limited to, pile drivers, power shovels, derricks, hoist tractors, rollers, concrete hauling motor vehicles, pavement breakers, bulldozers, crawler-tractors, rotatory drills and augers, cranes, ditchers, trenchers, scrapers, wagons, pumps, compressors, pneumatic power equipment, or other mechanical apparatus operated by fuel or electric power in the construction, repair or demolition of any building, structure, land, street, alley, waterway, or appurtenance thereto.

(3) "Continuous noise" shall mean the equivalent continuous A-frequency weighted sound pressure level per American National Standards Institute (ANSI) Section 1.43-1997 (R

2007), taken over a thirty-second time Interval, **or any unreasonable loud, raucous, or jarring sound or vibration which is not constitutionally protected speech in form and scope of audibility and which, under the circumstances of time, place, and manner in which it is produced and audible or perceptible, annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of a reasonable person of normal sensitivities within the area of the audibility of perceptibility of the noise or vibration without the consent of such person.**

(4) “db(a)” shall mean a measure of sound pressure level in decibels on the A-weighted scale.

(5) “Decibel meter” shall mean an instrument to measure decibels which meets or exceeds American National Standards Institute (ANSI) Section 1.43-1997 (R 2007) standards for type 2 special meters and is capable of measuring the equivalent continuous A-frequency weighted sound pressure level per ANSI S1.43-1997 (R 2007). These devices will be rechecked once a year for accuracy.

(6) “Domestic power equipment” shall mean any equipment or device used for routine home or building repairs and grounds maintenance.

(7) “Device” shall mean any mechanism which is intended to produce or which actually produces sound when operated or handled.

(8) “Noise” shall mean any sound which exceeds the prescribed decibel levels, at a time and location described in this section.

(9) “Person” shall mean and include any individual, corporation, association, partnership or limited partnership.

(10) “Property line” shall mean the boundary lines distinguishing ownership or the common wall of a townhouse, condominium, or leased premises.

(11) “Residential district” shall have the same meaning as in the zoning ordinance of the city, including residential/agriculture districts (RA), low density single-family residential districts (R-1), medium density single family residential districts (R-2), high density single-family residential districts (R-3), low density multi-family residential districts (R-4), and high density dwelling residential districts (R-5), or established by future zoning ordinances as residential.

(12) “Sound” shall mean that which is or can be heard, or particularly a temporal and spatial oscillation in pressure, or other physical quality, in a medium with internal forces that cause compression and rarefaction of that medium and which propagates at finite speed to distant points.

(13) “Sound-amplifying equipment” shall mean any machine or device for the amplification of the human voice, music, or any other sound or noise.

Section 9-3. Noise in residential districts or public right of way.

(a) Generally. It shall be unlawful for any person to use, operate, or permit to be used or

operated, any device, radio, musical instrument, television, phonograph, drum, sound amplifying equipment or device which produces or reproduces sound, either stationary or mobile, in such a manner so as to create any continuous noise which exceeds eighty-five (85) db(a) during the hours of 6:00 a.m. until 10:00 p.m. and fifty (50) db(a) during the hours from 10:00 p.m. until 6:00 a.m. at the corner of residence nearest the source of the sound within a residential district or upon any public street or right-of-way within, or bordering upon, any residential district within the corporate limits of the city.

(b) Loud or raucous sounds or noises. It shall be unlawful for any person to willfully make or cause a continuous noise which disturbs the peace or quiet of any residential district and which exceeds eighty-five (85) db(a) during the hours of 6:00 a.m. until 10:00 p.m. and fifty (50) db(a) during the hours from 10:00 p.m. until 6:00 a.m. at the corner of residence nearest the source of the sound within a residential district or upon any public street or right-of-way within, or bordering upon, any residential district within the corporate limits of the city **or any unreasonable loud, raucous, or jarring sound or vibration which is not constitutionally protected speech in form and scope of audibility and which, under the circumstances of time, place, and manner in which it is produced and audible or perceptible, annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of a reasonable person of normal sensitivities within the area of the audibility of perceptibility of the noise or vibration without the consent of such person.** Any person creating any such sound or noise as described in this section and/or anyone permitting such a sound or noise to be created in, or emanate from, any premises under his/her care, custody or control, shall be presumed responsible for any such sound or noise.

Section 9-4. Noise in Public Areas

(a) Unreasonable use of sound reproduction devices in public areas. It shall be unlawful for any person or persons to play, use, operate, or permit to be played, used or operated any radio, tape recorder, cassette player, compact disc (CD) player, other machine or devices for reproducing sound if the machine or device is located in or on any public property, including any public street, highway, building, beach, parking lot, building, sidewalk, park, or thoroughfare or located in or on any motor vehicle on a public street, highway, or public space and if the sound generated by such machine or device is audible at a distance of fifty (50) feet from the machine or device producing the sound.

Section 9-5. Exceptions.

(a) Emergency and public work. Noise or sound created in the performance of public service by governmental agencies or their contractors; or emergency work engaged in by persons for the public safety, health or welfare; or to restore property to a safe condition following a public emergency; or work to restore essential public services, including construction activities directly related to the abatement of any emergency, shall not be subject to the provisions of this section.

(b) Noises from authorized activities. The prohibitions of this section shall not apply to air traffic at the Foley Municipal Airport in Foley, Alabama; Licensed and approved FAA airfields or any activities of a temporary duration which are permitted by law and for which a license or permit has been granted by the city including but not limited to authorized parades, sporting

events, concerts, arts and crafts festivals, and fireworks displays.

(c) **Sirens, horns and whistles.** The provisions of this section shall not apply to any siren, whistle, horn, or bell used by emergency vehicles or civil defense or used by motor vehicles and boats as warning devices to avoid collisions.

(d) **Bells or chimes.** The provisions of this section shall not apply to any bell or chimes, or any device for the production or reproduction of the sound thereof which are associated with a clock of time keeping device, a church or school.

(e) **Burglar alarm.** The provisions of this section shall not apply to any burglar alarm or security device, provided, however, no burglar alarm or security device shall sound for more than fifteen (15) minutes after being activated.

(f) **Construction activity or equipment.** The provisions of this section shall not apply to any construction activity or equipment operated between the hours of 7:00 a.m. to 7:00 p.m.

(g) **Domestic power equipment.** The provisions of this section shall not apply to any domestic power equipment operated between the hours of 7:00 a.m. to 7:00 p.m.

(h) **Vessels.** The provisions of this section shall not apply to the operation of any motor boat or vessel on any lake, river, stream or waterway.

(i) **Motor vehicles.** The provisions of this section shall not apply to the normal and usual operation of motor vehicles.

Section 9-6. Penalties for violations. Any person violating any provision of section 9-1, section 9-3 or section 9-4 of the Code of Ordinances shall be guilty of an offense against the city and shall upon conviction be subject to punishment for each such offense as provided in section 1-8 of the Code of Ordinances. Where discrete conduct by a person separately and simultaneously violates section 9-1, section 9-3 and section 9-4, the conduct may be charged as a violation in the alternative under any section, but such conduct shall be punishable only as an offense under section 9-1, section 9-3 or section 9-4 and not as an offense under the sections simultaneously.

SECTION 2. That the provisions of this Ordinance are severable. If any part of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, that declaration shall not affect the part or parts that remain.

SECTION 3. That this Ordinance shall be effective within the corporate limits and the police jurisdiction of the City of Foley immediately upon its adoption and publication as required by law.