

BOARD OF SUPERVISORS MINUTES AUGUST TERM, 2006
PEARL RIVER COUNTY, MISSISSIPPI

COPY

ORDER TO ACCEPT NOISE ORDNANCE

There came on this day to be considered by the Board of

Supervisors of Pearl River County, Mississippi, the matter to accept Noise Ordinance.

Upon motion made by Larry Davis and seconded by Bettye

Stockstill, the following order was adopted, to-wit:

Be It Ordered by the Pearl River County Board of Supervisors

to accept AN ORDINANCE OF THE PEARL RIVER COUNTY, MISSISSIPPI BOARD OF SUPERVISORS TO SECURE THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE OF THE RESIDENTS AND PROPERTY OWNERS OF THE UNINCORPORATED PEARL RIVER COUNTY, MISSISSIPPI BY THE REGULATION OF THE NUISANCE OF EXCESSIVE NOISE WITHIN THE COUNTY AND TO PRESCRIBE THE SANCTIONS FOR THE VIOLATION THEREOF as prepared by the County Attorney.

Ordered and adopted, this the 28th day of August, 2006.

Voting AYE: Danny Wise, Larry Davis, Robert Thigpen and Bettye Stockstill.

Voting NAY: None.

Absent: Anthony Hales.

AN ORDINANCE OF THE PEARL RIVER COUNTY, MISSISSIPPI BOARD OF SUPERVISORS TO SECURE THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE OF THE RESIDENTS AND PROPERTY OWNERS OF THE UNINCORPORATED PEARL RIVER COUNTY, MISSISSIPPI BY THE REGULATION OF THE NUISANCE OF EXCESSIVE NOISE WITHIN THE COUNTY AND TO PRESCRIBE THE SANCTIONS FOR THE VIOLATION THEREOF.

WHEREAS, due to the growth in Pearl River County, Mississippi during the recent years, it is found and declared that: the making and creation of excessive, unnecessary or unusually loud noises within the unincorporated Pearl River County, Mississippi is a condition which has existed for some time and the extent and volume of such noises is increasing. And

WHEREAS, the Pearl River County Board of Supervisors has determined that the making and creation of excessive or unusually loud noises and sounds interfere with and pose a threat to the health of the sick, the young and the elderly. And

WHEREAS, the making and creation or maintenance of such excessive, unnecessary, unnatural or unusually loud noises which are prolonged, unusual and unnatural in their time, place, use and affect are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the citizens of the county. And

WHEREAS, the making of excessive or unusually loud sounds and noises constitute a nuisance which threatens the peace and dignity of rural living. And

WHEREAS, the best interest of the Citizens of Pearl River County would be served by the provisions and prohibitions hereinafter contained and enacted is declared as a matter of legislative determination and public policy and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety and welfare and prosperity and the peace and quiet of the county and its inhabitants. And

WHEREAS, the appropriate person(s) to enforce this ordinance of the nuisance of excessive noise are the Pearl River County Sheriff's Department, Pearl River Safety Division, Pearl River County Building Code Office, and any lawful officer(s).

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF
SUPERVISORS OF PEARL RIVER COUNTY, MISSISSIPPI
AS FOLLOWS:**

SECTION I. SHORT TITLE

This ordinance shall be known and may be cited as "Pearl River County Noise Control Ordinance".

SECTION II. AUTHORITY AND PURPOSE

This Ordinance is enacted under the statutory authority of the State of Mississippi and the general police powers of the county. The purpose of this ordinance is to abate sources of excessive noises deemed to be a nuisance and a menace to the public health, comfort, convenience, safety, welfare and prosperity of the citizens of the county pursuant to Miss. Code Ann. Section 97-35-9, et. seq., as amended

SECTION III. APPLICABILITY

This ordinance shall apply to and be enforced in all unincorporated areas of the county.

SECTION IV. DEFINITIONS

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

Abate means the removal, stoppage or destruction of that which causes a nuisance.

Background Noise means a more or less consistent sound pressure level resulting from multiple sources of resonance within a specified environment. Background noise is commonly represented as an equivalent A-weighted sound level (LAeq) over a specified period of time.

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.

Developed Area means an area of increased use density demonstrated by a change in the use of land and size parcels of land away from a formerly

agricultural/undeveloped status toward a predominately residential or commercial character.

Emergency means any occurrence or set of circumstances involving actual or eminent physical trauma or property damage that demands immediate action.

Emergency vehicle means authorized publicly or privately owned ambulances, or motor vehicles belonging to a fire or police department, or to any federal, state, country or municipal agency provided said vehicles are in use as emergency vehicles by one authorized to use said vehicles for that purpose.

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.

Enforcement Agency means Pearl River County Sheriff's Department, Pearl River County Building Code Office, Pearl River County Safety Division and any lawful officer of Pearl River County.

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. Without limitation, "hospital" does not include convalescent or boarding homes, homes for the aged or others 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.

Industrial activity means enterprises engaged in the basic processing, manufacturing, repair or assembly of materials or products predominately from extracted or raw materials, or a use engaged in the storage of or manufacturing processes using inflammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions.

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, semi trailers, campers, go-carts, amphibious craft on land, dune buggies, or racing vehicles, but not including motorcycles.

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.

Motorcycle means an unenclosed motor vehicle having a saddle for the use of the operator and two (2) or more wheels in contact with the ground, including, but not limited to, motor scooters and minibikes.

Nuisance means any public nuisance known at common law or in equity jurisprudence.

Nursing home has the same definition and meaning as defined in Miss. Code Ann. Section 73-17-5 (b) et. seq., as amended.

Person means any individual, firm, association, partnership. Corporation, joint venture, enterprise, or any entity, public or private in nature.

Premises means any building, lot, parcel real estate or land portion of land whether improved or unimproved, occupied or unoccupied, including adjacent streets, sidewalks, parkways and parking strips.

Property boundary or property line means 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 intrabuilding real property divisions.

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.

Residence or residential area means a single-family, duplex or multifamily dwelling or an area having such dwellings.

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.

Weekdays mean 7:00 a.m. Monday through 5:00 p.m. Friday.

Weeknights mean 5:00 p.m. through 7:00 a.m. Monday through Thursday.

Weekends mean 5:00 p.m. Friday through 7:00 a.m. Monday inclusive of official holidays observed by Pearl River County.

SECTION V. ANTI-NOISE REGULATIONS

- A. **GENERAL REGULATION** 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 county which is offensive to the ordinary sensibilities of the inhabitants of the county, which noise renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort.
- B. **SPECIFIC VIOLATIONS** 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 motorboat, 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 or other type of residence.
 3. The use of any motor vehicle, motorcycle or motorboat, so out of repair which emits or creates loud, raucous or rattling noises.
 4. 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.
 5. 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.

6. 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.
7. The construction, including excavation, erection, alteration, repair or demolition 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, and between the hours of 8:00 a.m. and sundown during weekends except in the case of urgent necessity in the interest of public safety, for which a permit must be obtained from the Pearl River County Building Code Office in accordance with Section seven (VII) herein.
8. A noise produced by an industrial activity taking place in a developed area where the source of the offensive sounds is outside of an established commercial or industrial park and where the equivalent sound level (L_{aeq}) produced by the activity is above the background noise level of the area as measured from any property line at times other than between the hours of 7:00 a.m. and 9:00 p.m. weekdays and 8:00 a.m. and sundown during weekends and official holidays.
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, on 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 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.
14. The operation of any race-track, proving ground, testing area or obstacle course for motor vehicles, motorcycles, boats, racers, automobiles or vehicles of any kind or nature in any area of the county where noise emanating therefrom would be unreasonably disturbing and upsetting to other persons in the vicinity. Under no circumstances shall any race-track, proving ground, testing area or obstacle course operate after 10:30 p.m. weekdays and 10:30 p.m. on weekends and official holidays.
15. The operation of electric generators during periods of electrical outage that are placed or oriented in such a manner as to cause a disproportional auditory hardship for adjacent property owners or occupants of those properties. Generating equipment shall not be subject to this subsection if the unit is located on an area of the property where the noise produced by the operation of said unit is significantly less disrupting to any of the surrounding properties than to the property on which the generator is located.

C. **PRESUMPTION** – Whenever a violation of a subsection of this section occurs, 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 of prima facie evidence of the ownership of the motor vehicle or motorcycle by the person to whom the certificate of registration was issued.

D. Use of bell or 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 law enforcement officers, fire department and ambulances may attach and use a bell, siren, compression or exhaust whistle.

E. SOUND EQUIPMENT

1. A person commits an offense of this subsection if he or she operates or causes to be operated any sound equipment in a public place upon any public right-of-way, sidewalk, street, alley or highway of the county 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 7:00 a.m. and 9:00 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:
 - (1) Hospital;
 - (2) School that is in session;
 - (3) Church that is in use or session;
 - (4) Nursing home; or
 - (5) 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.
3. The order required by subsection (2) of this subsection may be given by a deputy, code officer, safety officer, a firefighter, a person with authority to control the use of the premises or public right-of-way.
4. It is a defense to prosecution under subsection E. 1. 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 VI. EXEMPTIONS

A. The following are exempt from the provisions of Section five (V):

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 county, or for which a permit has been granted by the county.
5. Noises or sounds resulting from activities of a temporary duration, for which a special permit or variance has been granted pursuant to this section, 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 county are exempt from this section between the hours of 7:00 a.m. and 9:00 p.m. on weekdays, and between the hours of 8:00 a.m. and sundown during weekends 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, operation 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.

12. Federal, state or local government 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.
17. An industrial activity conducted within an established industrial park that does not create an equivalent sound level (LAeq) significantly above the typical background noise level of the surrounding developed residential or mixed use area when measured outside of the park in said area shall be exempt.
18. Industrial activities operating within the parameters granted in a special variance or a permit described in Section VII shall be exempt.

SECTION VII. VARIANCES OR PERMITS

A. Any person desiring relief from any provision of this ordinance shall apply for a special variance or permit to be made in writing to the Building Code Officer hereinafter called Building Official. Payment of a fee of twenty five dollars (\$25.00) shall accompany the application. The said Building Official shall have the authority, consistent with this subsection, to grant special variances and permits upon written application only upon a good and sufficient showing that:

1. The activity, operation, noise source, or offending noise will be of short duration and cannot be done in a manner that would comply with this section; or
2. The applicant needs additional time to modify equipment or take other action in order to comply with the provisions of this section.

B. An application for a variance or permit shall be approved or denied within five (5) days after receipt by the Building Official. If approved, the variance or permit shall contain a specific time limit on the permitted activity or noise and said variance or permit shall immediately terminate at the expiration of that time limit, which is not to exceed fifteen (15) consecutive days. If an application is denied, the Building Official must state with specificity the reasons why the proposed variance or permit does not meet the criteria outlined in this section. The applicant may appeal the decision to the Board of Supervisors. Any such appeal shall be taken by submitting a written notice of request of appeal with the Clerk of the Board no more than ten (10) days from the denial of a permit or variance. Such notice of request of appeal must contain the full name and address of the person making the appeal and an account of the reasons for the appeal and the decision being appealed from.

C. The following factors shall be considered, in the initial investigation, in order to determine whether granting the variance or permit will result in a condition injurious to health or safety of the general public of the unincorporated Pearl River County:

1. Distance of proposed activities from a residential area or zone;
2. Number of sound amplification equipment or devices;

3. Anticipated direction of sound amplification equipment or devices;
 4. Anticipated duration of proposed activities;
 5. Whether the activities will be held within or outside of a structure;
 6. The time of day or night when the noise or sound will occur; and
 7. Any other consideration deemed necessary by the Building Official.
- D. Any permit or variance granted pursuant to this section shall contain thereon, in addition to any other requirements set out herein, all conditions upon which such permit or variance has been granted, including, but not limited to, the effective date, time of day, location, including, but not limited to, the proximity of the activity or noise to residential areas, schools, churches, hospitals, nursing homes or public libraries, sound level limit, if any, or equipment limitation.
- E. Variances and permits that are granted by the Building Official under this subsection must be displayed and available for review by deputies or other designated governmental officials upon request.
- F. Issued variances and permits will be surrendered to any deputy or other designated official upon request when the variance/permit has expired or the restrictions thereon have been violated.
- G. The Building Official and or lawful officer shall have the authority to revoke any permit or variance issued on the finding of any of the following:
1. That the activity is being conducted in a manner inconsistent with the variance or permit, including the description of the activity as set out in the application.
 2. That there is any misrepresentation of the activity on the application for the variance or permit.

3. That the activity is causing an unreasonable disturbance of the peace of families or persons within the area into which the noise or sound carries.

SECTION VIII. JURISDICTIONS, VIOLATIONS AND PENALTIES

The Pearl River County Justice Court shall have jurisdiction to determine violations and/or penalties under this Ordinance. Any person, agent, business, company, corporation, enterprise, establishment, firm, institution, lessee owner, tenant or occupant who shall violate any provision, shall fail, neglect, or refuse to fully comply with any permit, variance or regulation, as described herein, or order given in pursuance by authority of this Ordinance shall be prosecuted for a misdemeanor. Any person found guilty of any provisions of this ordinance by the Justice Court in Pearl River County shall be punished by a fine of not more than One Thousand Dollars (\$1000) or a sentence of not more than six (6) months in the County Jail or both. However, imposition of such fines or jail sentences shall not prohibit said court from imposing civil or community service penalties which would include, but are not limited to, picking up litter or performing other labor commensurate with the offense committed.

SECTION IX. PUBLICATION

The clerk of this Board is hereby authorized and directed to publish this Ordinance in a newspaper having general circulation in Pearl River County, Mississippi. Further, said Clerk is hereby authorized and directed to furnish certified copies of this Ordinance to the Pearl River County Justice Court, Pearl River County Safety Department, the Pearl River County Sheriff's Department, Pearl River County Building Code Office and the Pearl River County Law Librarian.

SECTION X. CONFLICTING ORDINANCES REPEALED

Any conflicting Pearl River County ordinance or noise ordinance and amendments adopted prior to this Ordinance are hereby repealed and replaced by this Ordinance.

SECTION XI. SEVERABILITY

If any provision of this Ordinance is for any reason held to be invalid or unconstitutional by an court of competent jurisdiction, such provision and such holding shall not affect the validity of any other provision and to that end the provisions of this Ordinance are hereby declared to be severable.

SECTION XII. EFFECTIVE DATE

This Ordinance shall become effective from and after its adoption, nevertheless, it shall be published in a paper of general circulation in Pearl River County, Mississippi.

ADOPTED by the Pearl River County Board of Supervisors on this the 28th day of August, A.D., 2006.

BY: _____, CHANCERY CLERK
EX-OFFICIO CLERK OF THE BOARD
(SEAL)