

ORDINANCE NO. 2007-2

**AN ORDINANCE RESTRICTING LOUD, EXCESSIVE OR
UNNECESSARY NOISE**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF
MULBERRY, KANSAS.**

WHEREAS, the making and creation of excessive, unnecessary or unusually loud noises within the limits of the City is a condition which has existed for some time in certain areas of the City.

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

WHEREAS it is necessary and in public interest for the provisions and prohibitions contained in this division and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity to and the peace and quiet of the City and its inhabitants.

BE IT HEREBY RESOLVED AS FOLLOWS:

Section 1. Unlawful noise generally.

It shall be unlawful for any person to be in charge of any premises, or to participate in or be in any party or gathering of people from which any unusually loud, excessive or unnecessary noise emanates so as to annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of others inside the limits of the City. A police officer may order all persons present at such a party or gathering to immediately disperse from the vicinity of the party or gathering in lieu of being charged under this division; provided, however, that owners or tenants are not required to leave their own dwelling unit. Owners or tenants residing in a dwelling unit from which such noise emanates or where the party or gathering occurs shall, upon request of a police officer, cooperate fully in abating the disturbance and failing to do so shall be in violation of this division.

Section 2. Specific noises prohibited; standards.

The following acts, among others, are declared to be loud, excessive and unnecessary noises in violation of this division, but such enumeration shall not be deemed to be exclusive, namely:

- 1) The playing, using, operating, or permitting to be played, used or operated, any radio, receiving set, musical instrument, phonograph, tape player,**

television, VCR, compact disk player, loudspeaker, or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet, repose, and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the persons who are in the hotel, motel, residence, office, or upon the premises, in which such machine or device is operated. The operation of any such set instrument, phonographs, tape player, television, VCR, compact disc player, loudspeaker, machine or device between the hours of 10:00p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from hotel, motel residence, office or premises in or on which it is emanates shall be prima facie evidence of a violation of this Section. Measurement standards for plainly audible at a distance of 50 feet shall be by the auditory senses, based upon direct line of sight. Words and phrases need not be discernible and bass reverberations are included.

- 2) Yelling, shouting, whistling or singing in the public streets, highway, alleys or sidewalks, or while on a private or public parking area or parking lot, or while in or upon a private residence, lot or driveway, so as to annoy or disturb the peace, quiet, comfort or repose of the persons in any residence, premises, office, hotel or motel. Such yelling, shouting, hooting, whistling or singing between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the boundary of such street, highway, alley, sidewalk, parking area or parking lot shall be prima facie evidence of a violation of this Section.

Section 3. Loud sound amplification systems.

- (a) It shall be unlawful for any person operating or occupying a motor vehicle in a street, highway, alley, parking lot or driveway to operate or permit the operation of any sound amplification system from within the vehicle so that the sound is plainly audible at a distance of 100 or more feet from the vehicle.
- (b) The term "sound amplification system" means any radio, tape player, compact disc player, loudspeaker, or other electronic device used for the amplification of sound.
- (c) The term "plainly audible" means any sound produced by a sound amplification system from within the vehicle, which clearly can be heard at a distance of 100 feet or more. Measurement standards shall be by the auditory senses, based upon direct line of sight. Words or phrases need not be discernible and bass reverberations are included. The motor vehicle may be stopped, standing, parked or moving on a street, highway, alley, parking lot or driveway.
- (d) It is an affirmative defense to a charge under this Section that the operator or occupier was not otherwise prohibited by law from operating the sound amplification systems, and that any of the following apply:
 - 1) The system was being operated to request medical or vehicular assistance or to warn of hazardous road condition;

- 2) The vehicle was an emergency or public safety vehicle.
- 3) The vehicle was owned and operated by the City or a gas, electric, communications or refuse company;
- 4) The system was used for the purpose of giving instructions, directions, talks, addresses, lectures or transmitting music to any persons or assemblages of persons in compliance with ordinances of the City; or
- 5) The vehicle was used in authorized public activities, such as parades, fireworks, sports events, musical productions and other activities which have the approval of the department of City authorized to grant such approval.

Section 4. Loudspeakers; amplifiers; permit

It shall be unlawful for any person, either as principal, agent or employee, to play, use or operate for personal enjoyment, for purpose of attracting attention, or for advertising purpose of attracting attention, or for advertising purposes on the streets or alleys of the City, or upon any private property any device known as calliope, or any other musical instrument if similar character, without first procuring permission therefore from the City Commission. The permission shall be granted at the discretion of the City Commission.

Section 5. Fine for Violation

A violation of this ordinance is punishable by a fine of a fine between \$100.00 and \$500.00.

PASSED AND APPROVED this 12th day of June, 2007.

/s/ Ralph Bartley 111, Mayor

**ATTEST:
/s/ Janice L. Gilbert
City Clerk**