

CHAPTER 93: NUISANCES

Section

General Provisions

- 93.01 Definition
- 93.02 Certain conditions declared a nuisance
- 93.03 Permitting, maintaining nuisance prohibited
- 93.04 Abatement procedure

Noise Regulation Program and Control Plan

- 93.10 Statement of policy and intent
- 93.11 Excessive noise prohibited
- 93.12 Excessive noise defined
- 93.13 Specific prohibitions
- 93.14 Motor vehicles
- 93.15 Noise sensitive zones
- 93.16 Special permits
- 93.17 Noise levels

- 93.99 Penalty

Statutory reference:

Private nuisances, see KRS 411.500 - 411.570

GENERAL PROVISIONS

§ 93.01 DEFINITION.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

NUISANCE. Any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition, or thing either;

- (A) Injures or endangers the comfort, repose, health or safety of others;
- (B) Offends decency;
- (C) Is offensive to the senses;

(D) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch, or drainage;

(E) In any way renders other persons insecure in life or the use of property;

(F) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

('82 Code, § 12-1)

§ 93.02 CERTAIN CONDITIONS DECLARED A NUISANCE.

The maintaining, using, placing, depositing, leaving, or permitting to be or remain on any public or private property of any of the following items, conditions, or actions are hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

(A) Any excess growth of noxious weeds or grass or other rank vegetation.

(B) Accumulation of rubbish, trash, refuse, junk, and other abandoned materials, metals, lumber, or other things.

(C) Any condition which provides harborage for rats, mice, snakes, and other vermin.

(D) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located.

(E) All unnecessary or unauthorized noises and annoying vibrations, including animal noises.

(F) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances, or other causes which give rise to the emission or generation of such odors and stenches.

(G) The carcasses of animals or fowl not disposed of within a reasonable time after death.

(H) The pollution of any public well or cistern, stream, lake, canal, or body of water by sewage, dead animals, creamery, industrial wastes, or other substances.

(I) Any building, structure, or other place or location where any activity which is in violation of local, state or federal law is conducted, performed, or maintained.

(J) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.

(K) Dense smoke, noxious fumes, gas, soot, or cinders, in unreasonable quantities.

(L) The failure of the owner of property abutting any sidewalk to keep such sidewalk free of weeds, trash, garbage, or rubbish, or to keep such sidewalk in good repair.

(M) Any other health hazard, source of filth or public nuisance.
(‘82 Code, § 12-2) (Ord., passed 9-10-74; Am. Ord., passed 6-12-79)

§ 93.03 PERMITTING, MAINTAINING NUISANCE PROHIBITED.

It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance.

(‘82 Code, § 12-3) Penalty, see § 10.99

§ 93.04 ABATEMENT PROCEDURE.

(A) Whenever a nuisance is found to exist within the city the Chief of Police shall give written notice to the owner or occupant of the property upon which such nuisance exists or upon the person causing or maintaining the nuisance. (‘82 Code, § 12-4)

(B) Contents of notice. The notice to abate a nuisance issued under the provisions of this chapter shall contain:

(1) An order to abate the nuisance or to request a hearing within a stated time, which shall be reasonable under the circumstances; in no event shall such time limit be less than five days.

(2) The location of the nuisance, if the same is stationary.

(3) A description of what constitutes the nuisance.

(4) A statement of acts necessary to abate the nuisance.

(5) A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the city will abate such nuisance and assess the cost thereof against such person.

(‘82 Code, § 12-5)

(C) Service of notice. In the case of a nuisance located upon the property of the person upon whom the notice is to be served, such notice shall be mailed to the last known address of the owner of the property as it appears on the current tax assessment roll. In the case of a nuisance which is not located upon such property, the notice shall be served as any other legal process may be served pursuant to law. (‘82 Code, § 12-6)

(D) Abatement by city. Upon the failure of the person upon whom notice to abate a nuisance was served pursuant to the provisions of this chapter to abate the same within the time limits specified in such notice, a person designated by the City Council shall proceed to abate such nuisance and shall prepare an affidavit of costs incurred in the abatement thereof. (‘82 Code, § 12-7)

(E) City's costs declared lien. The city shall have a lien against the property for the reasonable value of labor and materials used in remedying the nuisance situation. The affidavit of the authorized city official shall constitute prima facie evidence of the amount of the lien and the regularity of the

proceedings pursuant to KRS 381.770 and this section, and shall be notice to all persons from the time of its recording and shall bear interest at 6% per annum thereafter until paid. The lien created shall take precedence over all other subsequent liens, except state, county, school board, and city taxes, and may be enforced by judicial proceeding. In addition to this remedy or any other remedy authorized by law, the owner of a section shall be personally liable for the amount of the lien, including all interest, civil penalties, and other charges and the city may bring a civil action against the owner and shall have the same remedies as provided for the recovery of a debt owed.

(KRS 381.770)

(Ord., passed 6-12-79; Am. Ord., passed 9-10-74)

NOISE REGULATION PROGRAM AND CONTROL PLAN

§ 93.10 STATEMENT OF POLICY AND INTENT.

It is the intent of the city to establish by this subchapter a comprehensive noise regulation program and noise control plan as authorized pursuant to KRS 224.30 *et seq.* In adopting this subchapter, the City Council finds as follows:

(A) Excessive noise is a serious hazard to the public health, welfare and quality of life.

(B) A substantial body of science, technology and law exists by which noise levels can be accurately measured and excessive noise eliminated or abated.

(C) Every person has a right to an environment free from noise that jeopardizes his or her health, welfare or quality of life.

(D) It is the policy of the city to promote an environment for all people free from noise that jeopardizes health, welfare or quality of life.

(Ord. 1-05, passed 2-15-05)

§ 93.11 EXCESSIVE NOISE PROHIBITED.

It shall be unlawful for any person to make, continue, or cause to be made or continued, any excessive noise that jeopardizes the health, welfare or quality of life of others within the jurisdiction of the city.

(Ord. 1-05, passed 2-15-05)

Statutory reference:

Noise control, see KRS 224.710 et seq.

§ 93.12 EXCESSIVE NOISE DEFINED.

(A) (1) It shall be unlawful, except as expressly permitted in this subchapter, to make, cause, or allow the making of any noise that is excessive as defined herein. For purposes of this subchapter, **NOISE** is defined as any measurable level of sound whether produced from a single source or multiple sources.

(2) No person shall produce a noise level or operate or cause to be operated any source of noise that exceeds the limits set forth in Table 1. The level of noise may be measured at any location where the noise is capable of being perceived and measured. In the case of noise emitted from or emanating into a multi-family dwelling land use category, the sound level shall be measured within an adjacent intra-building dwelling.

(3) Noise is excessive if the measurable noise level exceeds the maximum permissible noise level limit set forth in Table 1 for the respective land use categories when a level of noise is measured for a period of one minute continuously. Noise is also excessive if three or more times in a 15-minute period the measurable noise level exceeds the maximum permissible noise level limit set forth in Table 1 for the respective land use categories. The period for measuring the noise shall not be less than one minute or greater than 15 minutes. Noise level measurement shall be made with a Type 2 or better sound level meter using the A-weighted scale in accordance with the standards promulgated by the American National Standards Institute (ANSI).

(4) The following table is a list of the maximum permissible sound levels by land use category wherein a noise is measurable. An areas land use is determined by the manner in which the area is zoned pursuant to the Mt. Sterling Zoning Ordinance (Ch. 155) and said Ordinance is hereby incorporated by reference:

TABLE 1

<i>Land Use Category</i>	<i>Time</i>	<i>Sound Level</i>
Single Family Residential (R-1A, R-1), noise sensitive areas as defined herein and public spaces.	7:00 a.m. — 10:00 p.m. 10:00 p.m. — 7:00 a.m.	70 dB(A) 60 dB(A)
Low Density Residential (R-2), Medium Density Residential (R-3), High Density Residential (R-4, R-1B and R-1T), and mobile home parks (MHP).	7:00 a.m. — 10:00 p.m. 10:00 p.m. — 7:00 a.m.	60 dB(A) 55 dB(A)
Agricultural (A), Professional Office (P-1), Business Districts (B-1, B-2, B-3 and B-4)	7:00 a.m. — 10:00 p.m. 10:00 p.m. — 7:00 a.m.	70 dB(A) 65 dB(A)
Industrial Districts (I-1 and I-2)	All Times	80 dB(A)

(B) Exemptions. The following are exempt from the sound level limits in the above listed division (A):

(1) Domestic power tools, lawn mowers, and agricultural equipment, when operated with a muffler during daylight hours.

(2) Noises resulting from any authorized emergency vehicles when responding to an emergency, noises from church bells and chimes. Noises from construction activity are exempt from division (A) during daylight hours except that the industrial sound level limit shall apply to all construction activity in all land use categories.

(3) Any noise resulting from activities of a temporary duration, for which a special permit has been granted pursuant to this subchapter, and which conforms to the conditions and limits stated thereon.

(4) Noises created by the sounding of train whistles at all public grade crossings as required by state law.

(5) Noises created by warning alarms sounding as a result of criminal activity or potential criminal activity or flooding, provided however, that noises emitted from warning alarms that have previously sounded three or more times within a 12-month period due to malfunction, equipment failure, or user error shall not be exempt. The 12-month period shall be measured from the date of the most recent emission of noise.

(6) Noises created by waste or garbage collection or compaction if such noise is created by the vehicle of a contractor authorized to be engaged in such collection or compaction within the city.

(Ord. 1-05, passed 2-15-05)

§ 93.13 SPECIFIC PROHIBITIONS.

The following activities are specifically prohibited:

(A) Yelling, shouting or whistling on the public streets as to annoy or disturb the quiet, comfort, or repose of persons in the vicinity;

(B) The sounding of any horn or signaling device on any vehicle except as a danger warning;

(C) The use, operation, or permitting the playing of, use, or operation of any radio, television, musical instrument, loudspeaker, phonograph, or any other machine or device for the production or reproduction of sound on the public rights-of-way in such a manner as to be plainly audible to any person other than the operator of the device. This provision shall apply to the operation of such equipment in public parks, public places and sidewalks, when measured at a distance of 50 feet. The use of such devices for the purpose of attracting the attention of the public or for commercial advertising is expressly prohibited regardless of the time of day or night unless permission has been specifically granted by the city.

(D) Animals. Owning, possessing or harboring any animal or bird which frequently or for continued duration, howls, barks, meows, squawks or makes sounds which creates excessive and unnecessary noise across a residential, commercial or noise sensitive zone. Barking dog is defined as any dog that barks, bays, howls, cries or makes any other noise continuously for five minutes or intermittently for 30 minutes or more to the disturbance of any person at any time of day or night regardless of whether the dog is physically situated in or upon private property. A dog is not deemed a "barking dog" if the times it is making noise, a person is trespassing or threatening to trespass upon private property in or upon which the dog is located or for any similar cause which teased or provoked the dog.

(Ord. 1-05, passed 2-15-05)

§ 93.14 MOTOR VEHICLES.

(A) No person shall operate a motor vehicle at any time in such a manner as to exceed the sound limits for the category of motor vehicles shown in § 93.12(A). The sound level shall be measured at a distance of at least 25 feet from the rear of the vehicle in the nearest lane to the curb being monitored, at a height of at least four feet above the immediately surrounding surface. This section shall apply to the total noise from a vehicle, including those noises addressed in § 93.13 above.

(B) The following are the maximum permissible sound levels for motor vehicles:

<i>Category</i>	<i>Speed Limit 35 mph or less</i>	<i>Speed Limit over 35mph</i>
Motor vehicle with a manufacturers Gross vehicle rating (GVWR) of 10,000 pounds or more or any combination of vehicles towed by such motor vehicle	85 dB(A)	90 d(B)A
Any other vehicle or any combination of vehicles towed by motor vehicle	80 d(B)A	80 d(B)A
Any Motorcycle	80 dB(A)	80 dB(A)

(C) No person shall operate or cause to be operated, any motor vehicle or motorcycle not equipped with a muffler is good working order and in constant operation.

(D) No person shall remove or render inoperative, or cause to be removed or rendered inoperative, any muffler or sound dissipative device on a motor vehicle or motorcycle other than for purposes of repair, maintenance or replacement.
(Ord. 1-05, passed 2-15-05)

§ 93.15 NOISE SENSITIVE ZONES.

It shall be unlawful to create any excessive noise on any street adjacent to any school, institution of learning, church, court, or hospital while the same is in use, which unreasonably interferes with the workings of such institutions or which disturbs or unduly annoys patients in the hospital, provided that conspicuous signs are displayed on the streets indicating such.
(Ord. 1-05, passed 2-15-05)

§ 93.16 SPECIAL PERMITS.

(A) Any person desiring relief from any provisions of this subchapter shall apply for a special permit to cause or create a noise at sound levels that would otherwise be in violation of this subchapter. Applications for a special permit shall be made in writing to the City Clerk who will place the request on the docket and submit it to the full City Council at its next regularly scheduled meeting. The Council may consider granting the special permit upon a showing by the applicant that:

Mt. Sterling - General Regulations

(1) Additional time is necessary for the applicant to alter or modify the activity in order to comply with the provisions of this subchapter;

(2) The activity, operation, or noise source will be of a temporary duration and cannot be done in a manner that would comply with the provisions of this subchapter; or

(3) No reasonable alternative is available to the applicant. Any permit granted pursuant to this section shall contain all conditions upon which the permit has been granted, including, but not limited to the effective date, time of day, location, sound level limit, or equipment limitation.

(B) No special permit shall be issued for a period in excess of fifteen consecutive days. Any special permit granted under this section may be renewed upon application in writing to the Mayor and upon demonstrating that the reasons for which the permit was granted, still exist.

(Ord. 1-05, passed 2-15-05)

§ 93.17 NOISE LEVELS.

TABLE 2

110 dB +	Deafening	12-inch cannon firing at 12 feet. Close to a train. Over 130 dB causes immediate hearing damage.
90 dB +	Very Loud	Car horn at 5 feet (100dB). Above 90 dB regularly can cause hearing damage.
70 — 80 dB	Loud	Police whistle.
45 — 60 dB	Moderate	Normal conversation. Normal office noise.
30 — 40 dB	Faint	Quiet conversation. Recording studio.

(Ord. 1-05, passed 2-15-05)

§ 93.99 PENALTY.

(A) It shall be unlawful for any person, firm, or corporation to violate or fail to comply with any provision of §§ 93.10 *et seq.* and where no specific penalty is provided therefor, the person, firm, or corporation shall be deemed guilty of a violation and shall be fined an amount not to exceed \$250 or by imprisonment in the county jail not to exceed 30 days or by both fine and imprisonment. Each day any violation of any provision of this code shall continue shall constitute a separate offense.

(B) Any owner, lessee, occupant or other person having charge of premises where any nuisance is caused, maintained or kept in violation of any of the provisions of §§ 93.10 *et seq.*, who fails to remove or abate the nuisance, after notice, as provided in § 93.12, shall be subject to the penalty as set forth in division (A). Each day the nuisance remains after the notice is given, shall constitute a separate offense. In the case of defective or illegal equipment on vehicles, the offender must also show proof of repair or rectification.

(Ord. 1-05, passed 2-15-05)