

ORDINANCE NO. 90397-0408

AN ORDINANCE AMENDING TITLE 7 POLICE REGULATIONS, CHAPTER 9 GENERAL OFFENSES, SECTION 3 DISTURBING THE PEACE, SECTION 4 DISTURBING THE PEACE BY A PERSON ASSOCIATION, FIRM, OR CORPORATION LEGALLY HOLDING AN OUTDOOR COMMERCIAL ENTERTAINMENT ESTABLISHMENT PERMIT, AND SECTION 5 DISTURBING THE PEACE BY A PERSON, ASSOCIATION, FIRM, OR CORPORATION LEGALLY HOLDING AN OUTDOOR COMMERCIAL ENTERTAINMENT ESTABLISHMENT PERMIT.

Be It Enacted by the City Council of the City of Muscatine, Iowa:

SECTION 1. AMENDMENT. TITLE 7 POLICE REGULATIONS CHAPTER 9 GENERAL OFFENSES, Sections 3, 4 and 5 of the City Code of Muscatine, which currently provide as follows:

7-9-3 Disturbing the Peace. Every person who shall unlawfully disturb the public quiet of any street, alley, avenue, public square, or any religious or other public assembly or building, public or private, or any neighborhood, private family, person or law enforcement officer by giving false alarms of fire, by any loud noise, playing or rendition of music of any kind, singing, loud talking, amplification of sound, by ringing bells, blowing horns or other instruments, or by indecent, obscene, or profane language, conversation or conduct, or by quarreling, assaulting, fighting, honking horn, squealing tires, loud engine or muffler noise, or by any other device or means whatsoever including but not limited to the use of a mobile vehicle, which clearly can be heard by auditory senses (ears) by a reasonable person with reasonable hearing shall be deemed guilty of a misdemeanor. If the person holds a valid outdoor commercial entertainment establishment permit, or is granted permission to hold a special event, such as Great River Days, Holiday Stroll, parades, etc., this Section does not apply.

7-9-4 Permitting Disturbing of Peace. Every person who shall suffer or permit any hollering, howling, screaming, bellowing, dog barking, profane or obscene language, fighting, playing or rendition of music of any kind, singing, loud talking, amplification of sound, or any loud noise in any house, mobile vehicle, or upon any premises owned, occupied or possessed by him, or of which he has control as agent or otherwise, in such manner as to disturb any neighborhood or persons or law enforcement officer passing in the streets, which clearly can be heard by auditory senses (ears) by a reasonable person with reasonable hearing, shall be deemed guilty of a misdemeanor. The proof of such acts having been done in such place shall be prima facie evidence that the same was done with the permission of the owner, occupant, or possessor, but such presumption may be rebutted by proof. If the person holds a valid outdoor commercial entertainment establishment permit, or is granted permission to hold a special event, such as Great River Days, Holiday Stroll, parades, etc., this Section does not apply.

7-9-5 Disturbing the Peace by a Person, Association, Firm, or Corporation Legally Holding an Outdoor Commercial Entertainment Establishment Permit.

Every person who has legally obtained an outdoor commercial entertainment establishment permit who shall suffer or permit any hollering, howling, screaming, bellowing, profane or obscene language, fighting, playing or rendition of music of any kind, singing, loud talking, amplification of sound within or outside of a building, or any loud noise upon the premises for which the permit was issued or of which he has control as agent which clearly can be heard by auditory senses (ears) by a reasonable person of reasonable hearing and after two (2) separate complaints by persons in a residential district have been made to the police department, verified by the police department that this section is being violated and after two (2) personal notifications by the police department to the person responsible for the premises, upon a third complaint by persons in a residential district to and verified by the police department that this section is being violated, all within a period of twenty four (24) hours shall be

deemed to have violated the terms of said permit, shall be charged with a municipal infraction and shall be subject to a civil penalty of \$500.00 for the first violation and a civil penalty of \$750.00 for each subsequent violation. In addition, upon the receipt and verification of such three separate complaints, the City Administrator or his/her designee shall be authorized to immediately suspend the permit for three (3) days. After three convictions of a municipal infraction, the City Administrator or his/her designee is authorized to revoke the permit. The permit holder shall have the right to appeal any suspension or revocation of the permit under this section to the City Council. All responsible persons shall be jointly and severally liable for civil penalties.

are hereby amended to provide as follows:

7-9-3 Disturbing the Peace.

Every person who shall unlawfully disturb the public quiet of any street, alley, avenue, public square, or any religious or other public assembly or building, public or private, or any neighborhood, private family, person or law enforcement officer by giving **loud** false alarms of fire, by any **loud** noise, **loud** playing or loud rendition of music of any kind, **loud** singing, **loud** talking, **loud** amplification of sound, by **loud** ringing bells, **loud** blowing horns or other instruments, or by **loud** indecent, **loud** obscene, or **loud** profane language, **loud** conversation or conduct, or by **loud** quarreling, **loud** assaulting, **loud** fighting, **loud** honking horn, **loud** squealing tires, **loud** engine or **loud** muffler noise, or by any other **loud** device or **loud** means whatsoever including but not limited to the use of a mobile vehicle, which clearly can be heard by auditory senses (ears) by a reasonable person with reasonable hearing shall be deemed guilty of a misdemeanor. If the person holds a valid outdoor commercial entertainment establishment permit, or is granted permission to hold a special event, such as Great River Days, Holiday Stroll, parades, etc., this Section does not apply.

7-9-4 Permitting Disturbing of Peace.

Every person who shall suffer or permit any **loud** hollering, **loud** howling, **loud** screaming, **loud** bellowing, **loud** dog barking, **loud** profane or loud obscene language, **loud** fighting, **loud** playing or **loud** rendition of music of any kind, **loud** singing, **loud** talking, **loud** amplification of sound, or any **loud** noise in any house, mobile vehicle, or upon any premises owned, occupied or possessed by him, or of which he has control as agent or otherwise, in such manner as to disturb any neighborhood or persons or law enforcement officer passing in the streets, which clearly can be heard by auditory senses (ears) by a reasonable person with reasonable hearing, shall be deemed guilty of a misdemeanor. The proof of such acts having been done in such place shall be prima facie evidence that the same was done with the permission of the owner, occupant, or possessor, but such presumption may be rebutted by proof. If the person holds a valid outdoor commercial entertainment establishment permit, or is granted permission to hold a special event, such as Great River Days, Holiday Stroll, parades, etc., this Section does not apply.

7-9-5 Disturbing the Peace by a Person, Association, Firm, or Corporation Legally Holding an Outdoor Commercial Entertainment Establishment Permit.

Every person who has legally obtained an outdoor commercial entertainment establishment permit who shall suffer or permit any **loud** hollering, **loud** howling, **loud** screaming, **loud** bellowing, loud profane or **loud** obscene language, **loud** fighting, **loud** playing or **loud** rendition of music of any kind, **loud** singing, **loud** talking, **loud** amplification of sound within or outside of a building, or any loud noise upon the premises for which the permit was issued or of which he has control as agent which clearly can be heard by auditory senses (ears) by a reasonable person of reasonable hearing and after two (2) separate complaints by persons in a residential district have been made to the police department, verified by the police department that this section is being violated and

after two (2) personal notifications by the police department to the person responsible for the premises, upon a third complaint by persons in a residential district to and verified by the police department that this section is being violated, all within a period of twenty four (24) hours shall be deemed to have violated the terms of said permit, shall be charged with a municipal infraction and shall be subject to a civil penalty of \$500.00 for the first violation and a civil penalty of \$750.00 for each subsequent violation. In addition, upon the receipt and verification of such three separate complaints, the City Administrator or his/her designee shall be authorized to immediately suspend the permit for three (3) days. After three convictions of a municipal infraction, the City Administrator or his/her designee is authorized to revoke the permit. The permit holder shall have the right to appeal any suspension or revocation of the permit under this section to the City Council. All responsible persons shall be jointly and severally liable for civil penalties.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

PASSED by the City Council the 3rd day of April, 2008, and APPROVED the 3rd day of April, 2008.



A. J. Johnson
A. J. Johnson, City Clerk

Richard W. O'Brien
Richard W. O'Brien, Mayor

First Reading	<u>3/20/08</u>
Second Reading	<u>4/3/08</u>
Third Reading	<u>4/3/08</u>
Publication	<u>4/12/08</u>

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MEMO

TO: A. J. Johnson, City Administrator

FROM: Harvey G. Allbee, Jr., City Attorney

DATE: March 11, 2008

SUBJECT: PROPOSED AMENDMENT TO CITY CODE SECTIONS 7-9-3, 7-9-5 AND 7-9-5 DISTURBING THE PEACE.

Attached is the proposed amendment to the city code sections above referenced in response to a ruling from District Associate Judge Gary P. Strausser of the Iowa District Court for Muscatine County finding our current City Code Section 7-9-3 is vague or overbroad, therefore being unconstitutional. The Court referred to a Iowa Supreme Court decision which stated in part:

“...a penal statute must satisfy two standards: (1) Must give a person of ordinary intelligence fair notice of what is prohibited; and (2) it must provide an explicit standard for those who apply it.”

Judge Strausser’s ruling also stated:

“A person violates the statute if they ‘disturb the public quiet ... by playing any music..., singing... honking horn... which can be heard by auditory senses by a reasonable person with reasonable hearing....The ordinance would permit conviction for any of the above mentioned sounds that can [be] heard by a reasonable person.’ ... None of aforementioned are preceded by a descriptive term such as loud.... There is no standard to measure conduct.”

It is my opinion that Section 7-9-3 as well as Sections 7-9-4 and 7-9-5 should be amended by inserting the descriptive term “loud” in each described conduct which the ordinance provides is a violation. The attached proposed amendment should accomplish this and should overcome the ruling it is vague or overbroad for the reasons stated in the Court’s ruling.

I recommend this proposed amendment be submitted to the city council for consideration and adoption.