

First Reading: August 19, 2014
Second Reading: August 26, 2014

ORDINANCE NO. 12850

AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 25, ARTICLE III, SECTIONS 25-67, 25-69, 25-73, 25-75, 25-76, AND 25-77 RELATIVE TO UNLAWFUL NOISES SO AS TO CREATE A DOWNTOWN AMPLIFIED MUSIC DISTRICT.

SECTION 1. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that Chattanooga City Code, Part II, Chapter 25, Article III, Section 25-67, be and is hereby amended as follows in parts:

ARTICLE III. SOUNDS

Sec. 25-67. Definitions and noise measurement procedures.

(a) All terms used in this Article shall, for the purpose of this Article, have the meanings hereinafter ascribed to them.

“A’ Weighted Sound Level” is the electronic filtering in sound level meters that models human hearing frequency sensitivity and shall mean the sound pressure level as measured with the sound level meter using the “A” weighing network. The standard unit notation is dB(A).

“C’ Weighted Sound Level” is the electronic filtering in sound level meters that minimally attenuates very low frequencies and shall mean the sound pressure level as measured with the sound level meter using the “C” weighing network. The standard unit notation is dB(C).

“dB(C)” shall mean the composite abbreviation for C- weighted sound level in decibels.

“Downtown Amplified Music District” or “AMD” shall mean the following geographic areas:

- (1) Main Street beginning at the intersection of West Main Street and Broad Street and continuing to the railroad tracks west of Adams Street.

- (2) Martin Luther King Boulevard beginning at the intersection of West Martin Luther King Boulevard and Broad Street and continuing to the intersection of East Martin Luther King Boulevard and University Street.
- (3) Market Street beginning at the intersection of Market Street and West Main Street and continuing to the intersection of Market Street and West 7th Street.
- (4) Broad Street beginning at the intersection of Broad Street and West Main Street and continuing to the intersection of Broad Street and West 7th Street.
- (5) Georgia Avenue from the intersection of Georgia Avenue and East Martin Luther King Boulevard and continuing to the intersection of Georgia Avenue and Patten Parkway, Patten Parkway, Lindsay Street beginning at the intersection of Lindsay Street and Patten Parkway and continuing to the intersection of Lindsay Street and East Martin Luther King Boulevard.

“Downtown Amplified Music District Permit” or “AMD Permit” means a permit granted by the Land Development Officer pursuant to Code Sec. 25-75 or, after an appeal, by the Board of Downtown Amplified Music District Permit Appeals. The AMD Permit shall be issued for a one (1) year term and shall be renewed yearly before the anniversary date of the initial issuance.

(b) For the purpose of determining dB(A)’s and dB(C)’s as referred to in this article, the noise shall be measured on the A-weighting scale and C-weighting scale set to slow meter response on a sound level meter of standard design and quality having characteristics established by the American National Standards Institute.

(c)(4) Ambient Conditions. Measurements shall be made only when the A-weighted ambient sound level, including wind effects and all sources other than the noise source being measured, is at least 10 dB(A) lower than the sound level of the of the noise source being measured.

SECTION 2. BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that Chattanooga City Code, Part II, Chapter 25, Article III, Section 25-69, be and is hereby amended by deleting same in its entirety and substituting in lieu thereof the following:

Sec. 25-69. Loudspeakers, amplifiers and sound-amplifying devices.

(a) Except for entities possessing a Downtown Amplified Music District Permit in the designated Downtown Amplified Music District, it shall be unlawful to:

- (1) Operate or allow the operation of any sound amplification equipment so as to create sounds registering fifty-five (55) dB(A) between 9:00 a.m. and 9:00 p.m. or fifty (50) dB(A) between 9:00 p.m. and 9:00 a.m., as measured anywhere within the boundary line of the nearest residentially occupied property, hospital, school in session or nursing home, except in accordance with a permit obtained from the chief building official.
- (2) As to multifamily structures including apartments, condominiums or other residential arrangements where boundary lines can not readily be determined, it shall be unlawful to operate or allow the operation of any sound amplification equipment so as to create sounds registering fifty-five (55) dB(A) between 9:00 a.m. and 9:00 p.m. or fifty (50) dB(A) between 9:00 p.m. and 9:00 a.m., as measured from any point within the interior of another residential unit in the same complex or within the boundary line of the nearest residentially occupied property, except in accordance with a permit obtained from the chief building official.
- (3) As to places of public entertainment having a capacity of one thousand (1,000) or more persons, operate or allow the operation of any sound amplification equipment so as to create sounds registering more than sixty-five (65) dB(A) between 9:00 a.m. and 9:00 p.m., or fifty (50) dB(A) between 9:00 p.m. and 9:00 a.m., as measured anywhere within the boundary line of the nearest residentially occupied property, except in accordance with a permit obtained from the chief building official.
- (4) Operate or allow the operation of any sound amplification equipment for advertising purposes or otherwise to attract customers so as to cast sounds which are unreasonably loud and disturbing or which register more than sixty (60) dB(A) at or on the boundary of the nearest public right-of-way or park.
- (5) Operate or allow the operation for personal use of any sound amplification equipment on the public right-of-way, including streets or sidewalks, or in the public parks so as to produce sounds registering more than sixty (60) dB(A) fifty (50) feet or more from any electromechanical speaker between the hours of 9:00 a.m. and 9:00 p.m., or fifty (50) dB(A) fifty (50) feet or more from any electromechanical speaker between the hours of 9:00 p.m. and 9:00 a.m.

(b) (1) For entities possessing a Downtown Amplified Music District Permit in the designated Downtown Amplified Music District, it shall be unlawful to emit sound in excess of

the following limits as measured at the property line of the business producing the sound averaged over one (1) minute:

Time (Monday –Thursday)	Sound Level Limit dB(A)	Sound Level Limit dB(C)
3:00 a.m. – 11:00 a.m.	55	70
11:00 a.m. – 11:00 p.m.	80	90
11:00 p.m. – 3:00 a.m.	65	80

Time (Friday – Sunday)	Sound Level Limit dB(A)	Sound Level Limit dB(C)
3:00 a.m. – 11:00 a.m.	55	70
11:00 a.m. – 12:00 a.m.	80	90
12:00 a.m. – 3:00 a.m.	65	80

(2) For entities possessing a AMD Permit in the designated Downtown Amplified Music District, it shall be unlawful to violate any terms, conditions, and requirements of the AMD Permit.

(c) No person operating or occupying a motor vehicle on any street, highway, alley, parking lot or driveway, either public or private property, shall operate or permit the operation of any sound amplification system, including, but not limited to, any radio, tape player, compact disc player, loud speaker, or any other electrical device used for the amplification of sound from within the motor vehicle so that the sound is plainly audible at a distance of fifty (50) or more feet from the vehicle or, in the case of a motor vehicle on private property, beyond the property line. For the purpose of this section, "plainly audible" means any sound which clearly can be heard, by unimpaired auditory senses based on a direct line of sight of fifty (50) or more feet, however, words or phrases need not be discernible and such sound shall include bass reverberation.

(d) The foregoing limitations on the operation of sound amplification equipment shall not apply to the operation of horns, sirens or other emergency warning devices actually being used in emergency circumstances.

SECTION 3. BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that Chattanooga City Code, Part II, Chapter 25, Article III, Section 25-73, be and is hereby amended by designating subpart (a) and by adding a new subpart (b) as follows:

Sec. 25-73. Enforcement and penalties.

(a) Where there is a violation of any provision of this article, the city court, in its discretion, may take one (1) or more of the following actions.

- (1) A citation fine of fifty dollars (\$50.00) for each violation.
- (2) A civil penalty not to exceed five hundred dollars (\$500.00) for each violation of this article may be adjudged to recover administrative expenses incurred in enforcing this article. A detailed and individualized statement of administration costs incurred by the city shall be submitted to the court for consideration if a civil penalty is sought.
- (3) A conditional civil penalty not to exceed five hundred dollars (\$500.00) for each separate violation of this article may be assessed by the city judge in the event of an intentional violation of this article conditioned upon the violator purging himself or herself of the civil penalty by not committing another violation of this article for one (1) year following imposition of the conditional civil penalty.

Provided that no combination of fines and civil penalties may exceed five hundred dollars (\$500.00) for each violation

(b) In addition to any fine or penalty assessed by city court, violators of this Article will be referred to the appropriate city regulatory board. The board may assess additional penalties, including, but not limited to, suspension or revocation of permits administered by the board. In the case of an entity holding an AMD Permit, more than three (3) violations of this Article in a ninety (90) day period shall result in either the suspension or revocation of the AMD Permit by the Land Development Officer. The action of the Land Development Officer shall be final, subject however to such remedy as any aggrieved party might have at law or in equity.

(c) In the event that a citation is issued because of a venue's violation of any provision of this article and the venue fails to reduce the sound levels to a level not in violation of this article, the venue shall be closed until the next usual opening time for the venue.

SECTION 4. BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that Chattanooga City Code, Part II, Chapter 25, Article III, Section 25-75, be added as a new section as follows:

Sec. 25-75. Downtown Amplified Music District Permit application process.

(a) The Land Development Officer may issue AMD Permits to a person who submits an application meeting the requirements of the provisions of this section. The Land Development Officer may adopt rules to implement the requirements of this Article.

(b) Persons desiring a Downtown Amplified Music District Permit shall apply to the Land Development Office and shall supply such information as the Land Development Office may require to identify the land and to determine whether the permit should be granted.

(c) The application shall set forth all actions taken to comply with the noise level limits set forth in Code Sec. 25-69(a), the reasons why compliance cannot be feasibly achieved, the reasons for such determination, the actions that have been taken to comply with the noise level limits set forth in Code Sec. 25-69(a), a proposed method for complying as nearly as is feasible, and a proposed time schedule for its accomplishment. The application shall be accompanied by a fee in the amount established by resolution of the city council. A separate application shall be filed for each noise source.

(d) A notice of the filing of an application shall be sent by regular U.S. mail to each of the property owners within a minimum of 300 feet of each property for which an entertainments are permit has been requested. The notice shall state that a copy of the application is available for review at the prior to any action on the application by the Land Development Officer. Said notice will be mailed at least fourteen (14) days prior to any action on the application by the Land Development Officer. The most recently updated tax rolls for the City of Chattanooga will be the source of ownership information for notice purposes. A notice shall also be published in a daily paper at least fourteen (14) days prior to any action on the application by the Land Development Officer.

(e) Persons objecting to the relief sought by the applicant or interested in the review or determination made by the Land Development Officer may likewise set forth their views and actual evidence in writing, signed by the objectors, and filed with the Land Development Office. The application and objections shall be considered by the Land Development Officer in the review of the application.

(f) In reviewing an application, the Land Development Officer Land Development Officer will consider the following criteria:

- (i) proximity of the venue emitting the sound to existing land uses;
- (ii) the size and capacity of the venue emitting the sound;
- (iii) sound mitigation actions that have been taken to comply with the noise level limits set forth in Code Sec. 25-69(a), including, but limited to, building design, landscaping, and buffering;
- (iv) the history of noise complaints or violations by either the applicant or the venue emitting the sound, of this Article as verified by the Chattanooga Police Department.

(g) The Land Development Officer may grant a Downtown Amplified Music District Permit if the Land Development Officer finds, after full consideration of all of the facts and the criteria set forth Code Sec. 25-75(f) that strict compliance with the noise level limits set forth in Code Sec. 25-69(a) will cause practical difficulties for the applicant.

A Downtown Amplified Music District Permit may be subject to any terms, conditions, and requirements as the Land Development Officer deems reasonable to achieve maximum compliance with the provisions of this Article. The terms, conditions and requirements may include, but shall not be limited to, limitations on noise levels and operating hours.

(h) Each Downtown Amplified Music District Permit shall set forth the approved method of achieving maximum compliance and a time schedule for its accomplishment. The Land Development Officer shall consider the magnitude of nuisance caused by the offensive noise, the uses of property within the area of impingement by the noise, the time factors related to study, design, financing and construction of remedial work, the economic factors related to age and useful life of equipment and the general public interest and welfare.

(i) Applications for an annual renewal of a Downtown Amplified Music District Permit shall be granted upon the finding that the applicant has complied with this Article, complied with the time schedule for complying with this Article as nearly as is feasible as set forth in the initial application, and has complied with any terms, conditions, and requirements as the Land Development Officer and/or the Board of Downtown Amplified Music District Permit Appeals deemed reasonable to achieve maximum compliance with the provisions of this Article.

(j) Decisions of the Land Development Officer may be appealed within ten (10) days to the Board of Downtown Amplified Music District Permit Appeals by filing a notice of appeal with the Land Development Office.

SECTION 5. BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that Chattanooga City Code, Part II, Chapter 25, Article III, Section 25-76, be added as a new section as follows:

Sec. 25-76. Board of Downtown Amplified Music District Permit Appeals.

(a) There is hereby established a board of three (3) members, to be known as the “Board of Downtown Amplified Music District Appeals.”

(b) One member of the board shall reside in City Council District 7, one member of the board shall reside in City Council District 8, and one member shall reside in the City at-large. The Chairperson of the City Council shall appoint the City-at-large board member; the Council Member representing City Council District 7 shall appoint the District 7 board member; and, the Council Member representing City Council District 8 shall appoint the District 8 board member.

(c) The term of all member of the board shall be for one (1) year. Members shall continue to serve until their successors are appointed.

(d) The board shall select its own chairman.

(e) The board shall establish rules and regulations for its own procedure not inconsistent with the provisions of this code. The board shall meet within thirty (30) calendar days after notice of appeal has been received on a date to be determined by the chairman.

(f) The board shall, in every case, reach a decision without unreasonable or unnecessary delay. Each decision of the board shall also include the reasons for the decision. The board shall consider the factors set forth in Sec. 25-75 and the written submissions to the Land Development Officer. The board may affirm, reverse or modify the decision of Land Development Officer. Every decision shall be promptly filed in writing in the Land Development Office. Every decision of the board shall be final, subject however to such remedy as any aggrieved party might have at law or in equity.

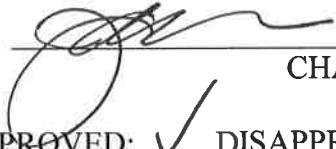
SECTION 6. BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that Chattanooga City Code, Part II, Chapter 25, Article III, Section 25-77, be added as a new section as follows:

Sec. 25-77. One Year Review.

The Land Development Office is directed to monitor the impact of this ordinance on the quiet enjoyment of residents located within the AMD. Such review shall also include an assessment of the permitting process and shall include, review times, cost of public notice, and any complaints received from business operators and residents. The Land Development Officer shall report to City Council on the impact of this ordinance approximately one year after the effective date of the ordinance.

SECTION 7. BE IT FURTHER ORDAINED, That this Ordinance shall take effect within thirty (30) days from and after its passage as provided by law.

Passed on second and final reading: August 26, 2014



CHAIRPERSON
APPROVED: DISAPPROVED:



MAYOR

KJR/mem