PUBLIC SAFETY COMMITTEE
COUNCILLOR JOEL MONTGOMERY
CHAIRMAN, PUBLIC SAFETY COMMITTEE

ORDINANCE NO. 04-98

AN ORDINANCE TO AMEND TITLE 11 "CRIMES AND OFFENSES," CHAPTER 8 "NUISANCES," ARTICLE B, "NOISES," SEC. 11-8-21 "ILLEGAL NOISES, GENERALLY"; SEC. 11-8-22 "DEFINITIONS" RELATING TO "A-WEIGHTED SOUND LEVEL," "AMPLIFIED SOUND," "DECIBEL," "EMERGENCY WORK," "L-50," "NOISE PERMIT," "OTHER PROPERTY," "PLAINLY AUDIBLE," AND "SOUND LEVEL"; AND SEC. 11-8-23 "PROHIBITED ACTS" RELATING TO "HORNS, SIGNALING DEVICES, ETC.," "ANIMALS, BIRDS, ETC.," "STATIONARY NON-EMERGENCY SIGNALING DEVICES," "LOUDSPEAKERS, AMPLIFIERS, ETC. FOR COMMERCIAL ADVERTISING PURPOSES," "SOUND AMPLIFICATION SYSTEMS, TELEVISION SETS, MUSICAL INSTRUMENTS, ETC.," "YELLING, SHOUTING, ETC.," "DEFECT IN VEHICLE OR LOAD," "REFUSE COLLECTION VEHICLES," "LOADING AND UNLOADING," "DOMESTIC POWER TOOLS," "CONSTRUCTION," AND "NOISES NEAR SCHOOLS, COURTS, CHURCHES, OR HOSPITALS"; SEC. 11-8-25 "EXEMPTIONS"; AND TO REPEAL SEC. 11-8-26 "PERMIT REQUIRED FOR OUTDOOR AMPLIFICATION"; SEC. 11-8-27 "APPLICATION FOR PERMIT"; AND SEC. 11-8-28 "SOUND LEVELS FOR NON-PERMITTED EVENTS".

BE IT HEREBY ORDAINED by the Council of the City of Birmingham, Alabama that Title 11 "Crimes and Offenses, "Chapter 8 "Nuisances," Article B, "Noises," Sec. 11-8-21 to incorporate a "reasonable person" standard and state legislative intent; Sec. 11-8-22 "Definitions," to add "amplified sound," "emergency work," and "other property," to repeal "A-weighted sound level," "decibel," "L-50," "noise permit" and "sound level," and to revise "plainly audible"; Sec. 11-8-23 "Prohibited Acts"to incorporate "reasonable person" standards and to revise time and distance standards relating to specific prohibited acts; Sec. 11-8-25 "Exemptions" to designate sources of noise exempt from the requirements of this article, including events permitted pursuant to the requirements of Birmingham City Code Sec. 12-5-22; and to repeal Sec. 11-8-26 "Permit Required for Outdoor Amplification"; Sec. 11-8-27 "Application for Permit"; and Sec. 11-8-28 "Sound Levels for Non-permitted Events", is amended and hereby adopted to read in full as follows:

SECTION 1.

Sec. 11-8-21 ILLEGAL NOISES, GENERALLY

No person shall make, continue or cause to be made or continue any noise which, because of its volume level, duration and character, either annoys, disturbs, or injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities. It shall be unlawful and a nuisance for any person to permit any such noise to be made in or upon any residence, business or other structure or upon any premises or in any vehicle owned or possessed by him or under his management or control.

The provisions hereinafter contained are enacted for the purpose of preventing noise disturbances or unreasonable noise. Above certain levels or durations and during specific times of day, unreasonable noise or noise disturbance is detrimental to the health, safety and welfare of the citizenry and the individual's right to peaceful and quiet enjoyment. Therefore, it is hereby declared to be the policy of the city to prohibit noise disturbances or unreasonable noise from all sources, subject to its police power, in order to secure and promote the public health, comfort, convenience, safety, welfare, and prosperity of the citizens of Birmingham. Nothing in this article is intended to deter individuals from lawfully exercising the individual right to freedom of speech or any other freedom guaranteed under the Constitutions of the United States of America or of the State of Alabama.

Sec. 11-8-22 DEFINITIONS

For the purpose of this section, the following definitions shall apply:

(1) "Alarm" means any fire, burglary, motor vehicle or civil defense alarm, whistle or similar stationary emergency signaling device.

(2) "Amplified Sound" means any sound that is broadcast through electronically amplified equipment or sound that is electronically enhanced.

(3) "Emergency" means any occurrence or set of circumstances involving actual or immediate physical trauma or property damage demanding immediate attention.

(4) "Emergency work" means repair or maintenance activities necessary to restore property to a safe condition from eminent public calamity or work required to protect persons or property from eminent exposure to danger.

(5) "Emergency vehicle" means a motor vehicle belonging to the fire and rescue service of the city, a vehicle utilized by emergency medical technicians of the fire and rescue service department, an ambulance, a motor vehicle belonging to any authorized police department or motor vehicle belonging to federal, state or municipal law enforcement agency; provided said vehicles are in use as an emergency vehicle by one authorized to use said vehicle for that purpose.

(6) "Motor vehicle" means a two or more wheeled vehicle, or machine, propelled or drawn by mechanical power and used on the public roads and highways in the transportation of passengers or property; or any combination thereof, which is required to be licensed, but does not include any vehicle, locomotive, or car operated exclusively on rail or rails.

(7) "Noise sensitive area" means an area within 500 feet from where a school, hospital, nursing home, church, court, or public library is located.

(8) "Person" means any individual, association, partnership, or corporation and includes any

officer, employee, department, agency, or instrumentality of the United States.

(9) "Plainly audible" means any prohibited sound, as defined by Section 11-8-23 "Prohibited Acts", from a vehicle, building, structure or open space which clearly can be heard at a distance of 10 feet or more from the vehicle or 50 feet from the building, structure or open space, which either annoys, disturbs, or injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities. The distance measured shall be the actual distance between buildings if less than 50 feet in residential zoned districts. Measurement standards shall be by the auditory senses, based upon direct line of sight. Words or phrases need not be discernable and bass reverberations are included.

(10) "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 government entity.

(11) "Real property line" means a line along the surface, and its vertical plane extension, which separates the real property owned, rented, or leased by one person from that owned, rented, or leased by another person, excluding intra-building real property division.

(12) "Residential Zoned District" means any area designated as E-1, R-1, R-2, R-3, R-4, R-4A, R-5, R-6, R-7, or R-8 zoning according to the City of Birmingham Zoning District Map.

(13) "Sound amplification system" means any radio, tape player, compact disc player, loud speaker, or other electronic device used for the amplification of sound.

Sec. 11-8-23 PROHIBITED ACTS

The following acts, and the causing thereof, in a manner to either annoy, disturb, or injure or endanger the comfort, health, peace or safety of reasonable persons of ordinary sensibilities are declared to be in violation of this ordinance; but such enumeration shall not be deemed to be exclusive:

(1) *Horns, signaling devices, etc.*

(a) The sounding of any horn, electronic alarm, or other signal device on any automobile, motorcycle, bus or other motor vehicle for more than thirty (30) seconds constantly, except as a danger warning when and as required by ordinances of the city or by the Code of Alabama;

(b) The creation by means of any such signaling device of any unreasonable, loud, or harsh sound;

(c) The sounding of such signaling device for an unnecessary or unreasonable period of time;

(d) The sounding of such signaling device when traffic is held up for any reason;

(e) The use of any signaling device except one operated by hand or by electricity;

(f) The use of any horn, whistle or other device operated by engine exhaust.

(2) *Animals, birds, etc.* The owning, possessing, harboring, or keeping of any animal or bird which, by causing frequent or long-continued duration, howls, barks, squawks, or makes other sounds or noise, creates excessive and unnecessary noise across a residential or commercial real property line or within a noise sensitive area. For the purposes of this

section, "Barking dog" shall mean a dog that barks, bays, cries, howls, or makes other noise continuously and/or incessantly for a period of ten minutes, or barks intermittently for one-half hour or more which disturbs the comfort or repose of persons of ordinary sensibilities in the vicinity.

(3) *Stationary non-emergency signaling devices.*

Sounding or permitting the sounding of any signal from any stationary bell, chime, siren, whistle or similar device intended primarily for non-emergency purposes, from any place, for more than one (1) minute in any hourly period;

(4) *Exhausts.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine or any motor boat, or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom and which device shall be in good working order and in constant operation.

(5) *Street sales.* Offering for sale or selling anything by shouting or outcry in a manner to either annoy, disturb, or injure or endanger the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within any residential or commercial area of the city, except in a stadium or sports arena.

(6) *Fireworks.* The explosion of firecrackers, skyrockets, roman candles, pinwheels, or any other form of fireworks, except the display of fireworks in public parks or other open places within the city under a permit issued by the fire marshal, pursuant to the fire prevention code of the city.

(7) *Loudspeakers, amplifiers, etc., for commercial advertising purposes.* The use, operation or permitting the use or operation of any drum, bell, horn, musical instrument, phonograph, loudspeaker, amplifier, public address system, or other instrument or device for production or reproduction of sound which casts sound which is audible more than 50 feet from across a real property line or more than 10 feet from a vehicle for the purpose of, or intending to attract attention to any building, structure, performance, show, sale, or display of merchandise, or for any other commercial advertising purpose, in a manner to either annoy, disturb, or injure or endanger the comfort, health, peace or safety of reasonable persons of ordinary sensibilities.

(8) *Sound amplification systems, television sets, musical instruments, etc.* Operating, playing or permitting the playing of any sound amplification systems, television sets, musical instruments, radio, phonograph, sound amplifier or similar device which produces, reproduces sounds in such a manner as to either annoy, disturb, or injure or endanger the comfort, health, peace or safety of reasonable persons of ordinary sensibilities residing or working in the area is hereby declared a nuisance.

(a) The operation of any such machine or device in such manner as to be plainly audible at a distance of 50 feet from the building or structure or from the source of the sound in open yard, or to be plainly audible within the nearest building if such structure is nearer than 50 feet to the source of the sound shall be prima facie evidence of a violation of this section.

(b) The operation of any such machine or device in such manner as to be plainly audible at a distance of 10 feet from any motor vehicle in which it is located, or from any pedestrian operating such device, or to be plainly audible within the nearest building if such structure is nearer than 50 feet to the source of the sound,

shall be prima facie evidence of a violation of this section. The motor vehicle may be stopped, standing, parked or moving on a public right-of-way, a park, parking lot or driveway on either public or private property.

(c) The operation of any such device by a passenger on a common carrier without the use of an external ear plug speaker, the effect of which is to make the sound audible only to the person operating such device.

(d) The provisions of this section shall not apply to activities permitted pursuant to Section 12-5-22 of the Birmingham City Code, when conducted between the hours of 8:00 a.m. and 10:00 p.m when within 50 feet of a residential zoned district.

(9) *Yelling, shouting, etc.* Yelling, shouting, hooting, whistling, or singing on the public streets, particularly between the hours of 10:00 p.m. and 7:00 a.m., or at any time or place so as to annoy or disturb the quiet, comfort, or repose of reasonable persons of ordinary sensibilities in any residence, hotel or other lodging facility, or in an office.

(10) *Defect in vehicle or load.* The use or operation of any automobile, motorcycle, or other vehicle which, by its physical state of repair, or by the manner in which it is loaded creates loud and unnecessary grating, grinding, rattling, roaring or other loud and unnecessary noise.

(11) *Refuse collection vehicles.* Operating or permitting the operation of:

(a) Any vehicle for collection and hauling of refuse between the hours of 10:00 p.m. and 7:00 a.m. in or within 500 feet of a residential zoned district.

(b) The compacting mechanism of any motor vehicle which compacts refuse between the hours of 10:00 p.m. and 7:00 a.m. in or within 500 feet of a residential zoned district.

(c) City of Birmingham crews and equipment used to provide necessary safety and sanitation services shall be exempted from the operation of this provision.

(12) *Loading and unloading.*

(a) Loading, unloading, opening, closing, destruction or other handling of boxes, crates, containers, building materials, garbage cans, or other similar objects between the hours of 10:00 p.m. and 7:00 a.m. in or within 500 feet of a residential zoned district.

(b) City of Birmingham crews and equipment used to provide necessary safety and sanitation services shall be exempted from the operation of this provision.

(13) *Emergency signaling devices.* Sounding or permitting the sounding of any exterior burglar alarm or any motor vehicle burglar alarm unless such alarm is automatically terminated within 15 minutes of activation unless there has been an attempted or actual entry of the premises or vehicle.

(14) *Domestic Power tools.* Operating or permitting the operation out of doors of any mechanically powered saw, grinder, lawn or garden tool or similar device between the hours of 10:00 p.m. and 7:00 a.m. in a residential zoned district.

(15) *Construction.*

(a) Any and all activity incidental to the erection, demolition, assembling, altering, repairing, installing, or equipping of buildings, structure, roads, or appurtenances thereto, including and clearing, grading, excavating and filling between the hours of 10:00 p.m. and 7:00 a.m. within 500 feet of any residential zoned district, except that the Traffic Engineer may allow such work during the hours between 10:00 p.m.

and 7:00 a.m. whenever traffic conditions prevent the activity during other times of the day.

(b) Emergency repair or maintenance of public roads and highways, parks, sewers, water, gas, electric, or telephone systems at any time or any such private construction necessary to restore property to a safe condition from eminent public calamity or work required to protect persons or property from eminent exposure to danger shall be exempted from the operation of this provision.

(16) *Noises near schools, courts, churches or hospitals.* The creation of any excessive noise within 500 feet of any school, institution of learning, church or court while the same is in use, or adjacent to any hospital, nursing home or similar facility which unreasonably interferes with the workings of such institutions or which disturbs or unduly annoys patients in such institution, provided that conspicuous signs are displayed in such streets indicating that the same is a school, hospital, church, or court street.

Sec. 11-8-24 DETERMINING CIRCUMSTANCES

Among circumstances which may be considered in determining whether a noise is unlawful and a nuisance include, but are not limited to the following:

(1) Volume of the noise;
(2) Intensity of the noise;
(3) Whether the nature of the noise is usual or unusual for the time and place;
(4) Whether the origin of the noise is natural or unnatural;
(5) The volume and intensity of the background noise, if any;
(6) The proximity of the noise to sleeping facilities;
(7) The nature and the zoning of the area from which the noise emanates;
(8) The density of inhabitation of the area from which the noise emanates;
(9) Time of day or night in which the noise occurs;
(10) Duration of the noise;
(11) Whether the noise is recurrent, intermittent, or constant;
(12) Whether the noise is produced by commercial or non-commercial activity.

Sec. 11-8-25 EXEMPTIONS

The provisions of this ordinance shall not apply to:

(1) The emission of sound by public safety vehicles, emergency signaling devices, or authorized public safety personnel for the purpose of alerting persons to the existence of an emergency;
(2) The emission of sound in the performance of emergency work;
(3) Noise resulting from the operation of the Birmingham International Airport;
(4) Noise generated from demonstrations, special events, races or runs permitted as required by Sec. 12-5-22 of the Birmingham City Code, provided that said demonstration, special event, race or run shall be conducted in a manner to avoid the creation of excessive, unreasonable or disturbing noise within 500 feet of any school, institution of learning, church or court while the same is in use, or adjacent to any hospital, nursing home or similar facility, so as

to unreasonably or unduly disturb the workings of such institutions and that such event is conducted only between the hours of 8:00 a.m. and 10:00 p.m when within 50 feet of a residential zoned district.;

(5) Sound generated by amplified and unamplified bells and chimes on schools, places of worship, public buildings and other places of assembly;

(6) Attendant on-site noise connected with the actual performance of organized sporting events on school campuses and in publicly or privately owned parks, stadiums, arenas, tracks or other similar facilities;

(7) Noises resulting from any practice or performance sponsored by or associated with the educational process administered by a recognized institution of learning, including, but not limited to band, choir and orchestral performances;

(8) Human sounds emanating from children twelve (12) years of age or under, including but not limited to speech and utterances of laughter, cries and sounds associated with play; and

(9) Sound generated from the use of a public address system at a business for communication necessary to the operation of the business, but not for the purpose of intending to attract attention to any building, structure, performance, show, sale, or display of merchandise, or for any other commercial advertising purpose.

Sec. 11-8-26 Repealed.

Sec. 11-8-27 Repealed.

Sec. 11-8-28 Repealed.

SECTION 2. BE IT FURTHER ORDAINED, that the provisions of this Ordinance are hereby declared to be severable. If any of these sections, provisions, sentences, clauses phrases, or parts are held to be unconstitutional or void, the remainder shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED, that this Ordinance shall become effective upon publication as required by statute.