



CITY COUNCIL MEETING

STUDY SESSION MEETING AGENDA

TUESDAY, OCTOBER 10, 2017, 1:00 PM

Council Chambers, 201 South Cortez Street
Prescott AZ 86303
(928) 777-1100

Harry Oberg, Mayor

Jim Lamerson, Mayor Pro Tem

Steve Blair, Councilman

Greg Lazzell, Councilman

Billie Orr, Councilwoman

Steve Sischka, Councilman

Jean Wilcox, Councilwoman

The following Agenda will be considered by the Prescott **City Council** at its **Study Session Meeting** pursuant to the Prescott City Charter, Article II, Section 13. Notice of the meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02. One or more members of the Council may be attending the meeting through the use of a technological device

1. CALL TO ORDER

2. ROLL CALL

3. DISCUSSION

- A. Progress report on the Airport Master Plan and discussion regarding future Airport development.
- B. Discussion regarding revision to Prescott City Code Noise Regulations.

4. ADJOURNMENT

EXECUTIVE SESSION

Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

- (1) Discussion or consideration of personnel matters (A.R.S. §38-431.03(A)(1));
- (2) Discussion or consideration of records exempt by law (A.R.S. §38-431.03(A)(2));
- (3) Discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03(A)(3));
- (4) Discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid litigation (A.R.S. §38-431.03(A)(4));
- (5) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03(A)(5));
- (6) Discussion, consultation or consideration for negotiations by the city or its designated representatives with members of a tribal council, or its designated

- representatives, of an Indian reservation located within or adjacent to the city (A.R.S. §38-431.03(A)(6);
- (7) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03(A)(7)).

THE CITY OF PRESCOTT ENDEAVORS TO MAKE ALL PUBLIC MEETINGS ACCESSIBLE TO PERSONS WITH DISABILITIES. With 48 hours advanced notice, special assistance can be provided for sight and/or hearing-impaired persons at this meeting. Reasonable accommodations will be made upon request for persons with disabilities or non-English speaking residents. Please call the City Clerk (928) 777-1272 to request an accommodation to participate in this public meeting. Prescott TDD number is (928) 445-6811. Additionally, free public relay service is available from Arizona Relay Service at 1-800-367-8939 and more information at www.azrelay.org

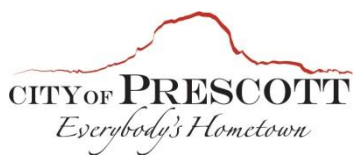
Confidentiality

Arizona statute precludes any person receiving executive session information from disclosing that information except as allowed by law. A.R.S. §38-431.03(F). Each violation of this statute is subject to a civil penalty not to exceed \$500, plus court costs and attorneys' fees. This penalty is assessed against the person who violates this statute or who knowingly aids, agrees to aid or attempts to aid another person in violating this article. The city is precluded from expending any public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced for violation of the statute unless City Council takes a legal action at a properly noticed open meeting to approve of such expenditures prior to incurring any such obligation or indebtedness. A.R.S. §38-431.07(A)(B).

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall on _____ at _____ m. in accordance with the statement filed by the Prescott City Council with the City Clerk

Maureen Scott, MMC, City Clerk

**COUNCIL AGENDA MEMO**

MEETING DATE/TYPE: **STUDY SESSION MEETING** **10-10-17**

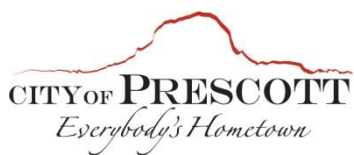
DEPARTMENT: **Airport**

AGENDA ITEM: Progress report on the Airport Master Plan and discussion regarding future Airport development.

Approved By: Michael Lamar, City Manager

Item Summary This presentation is to provide an update on the Airport Master Plan that will include an overview of information that has been covered in the first half of the planning process. It will be followed by a brief discussion on next steps for Airport development.

Recommended Action: Presentation for Council information and discussion – no formal action to be taken.

**COUNCIL AGENDA MEMO**

MEETING DATE/TYPE: **STUDY SESSION MEETING** **10-10-17**

DEPARTMENT: **City Attorney**

AGENDA ITEM: Discussion Regarding Revision to Prescott City Code Noise Regulations.

FUNDING SOURCE: General Fund

Approved By: Michael Lamar, City Manager

Item Summary

This is a discussion to determine whether the Council wants to revise the current City regulations regarding noise.

Background

There are four forms of noise ordinance for review on this topic. The first is Prescott's current noise regulation. The second is a model ordinance that enforces noise violations by a reasonable person standard. The third is the former City of Mesa code that regulates noise by way of decibel measurements. The fourth is Scottsdale's current noise regulation that enforces noise complaints by way of a reasonable person standard but that creates a rebuttal presumption that any noise over 68 dbL is unreasonable.

Financial Impact

The impact on noise enforcement is primarily on the Police Department, Code Enforcement and the City Prosecutor. Overly restrictive noise regulations could impact City special event operations.

Attachments

1. Prescott Noise Ordinance
2. ModelNoiseOrdinance2011
3. Noise Ordinance for the City of Mesa
4. ARTICLE_II.___SPECIAL_NOISE_VIOLATIONS

Recommended Action: For discussion only.

CHAPTER 5-4: UNNECESSARY NOISE PROHIBITED

SECTIONS:

- [5-4-1:](#) LOUD NOISE PROHIBITED:
- [5-4-2:](#) SPECIFIC ACTS PROHIBITED:
- [5-4-3:](#) EXCEPTIONS:
- [5-4-4:](#) STATUTORY CONSTRUCTION:
- [5-4-5:](#) TEMPORARY EXCEPTIONS:
- [5-4-6:](#) VIOLATIONS AND PENALTIES:

5-4-1 LOUD NOISE PROHIBITED:

The creating, permitting or allowing of any unreasonably loud and disturbing noise within the city limits is hereby prohibited. An "unreasonably loud and disturbing noise" is hereby defined as noise of such character, intensity or duration as to be detrimental to the life or health or well-being of any individual, or as to disturb the public peace and quiet of a neighborhood, family or person. (Ord. 4053, 11-14-2000)

5-4-2 SPECIFIC ACTS PROHIBITED:

(A) The playing of any radio, stereo, player, or other sound device, including, but not limited to, loudspeakers or other devices for reproduction or amplification of sound, from a public street, public property or public right of way, which can be heard seventy five feet (75') or more away.

(B) Noise emanating from the operation of portable machinery for stone crushing or grinding, or rock crushing or grinding at a temporary construction site, which disturbs the public peace and quiet of a neighborhood, family or person, unless specifically allowed by action of the city council, and in that event under such terms, conditions and limitations as set forth in the council's approval.

(C) The operation of a motor vehicle in such a manner as to cause the tire or tires to squeal or screech.

(D) The use of outdoor loudspeakers for the purposes of outdoor communication.

(E) Outdoor noise occurring during the course of construction at a temporary construction site which is generated by blasting, excavation, generators or heavy equipment (including, but not limited to, backhoes, tractors, concrete trucks, dump trucks, jackhammers and air compressors) shall only be allowed between the hours of six o'clock (6:00) A.M. through eight o'clock (8:00) P.M. Monday through Saturday, unless expanded hours of operation are specifically allowed by action of the city council, after a public comment meeting, and in

that event under such terms, conditions and limitations as set forth in the council's approval. (Ord. 4053, 11-14-2000)

5-4-3 EXCEPTIONS:

None of the terms or prohibitions as set forth in this chapter shall apply to or be enforced against:

- (A) Any governmental vehicle or activity while engaged in necessary public business.
- (B) Any private vehicle or activity while engaged in necessary public business at the request of a governmental entity, provided, however, that said private vehicle or activity shall not be exempt from the provisions of subsection [5-4-2\(E\)](#) of this chapter.
- (C) Excavations or repairs of water or sewer lines or utilities by or on behalf of a governmental entity or utility company.
- (D) The provisions of subsection [5-4-2\(A\)](#) of this chapter shall not apply to special events, concerts, parades, sporting events and similar activities which are taking place on public property with the permission or consent of that public entity.
- (E) The provisions of subsection [5-4-2\(D\)](#) of this chapter shall not apply to:
 - 1. Presently established and existing businesses which have an outdoor loudspeaker system as of September 1, 2000;
 - 2. The use of intercoms for two-way communications, where the conversation cannot be heard beyond the property line upon which the intercom is located;
 - 3. Special events, concerts, parades, sporting events and similar activities which are taking place on public property with the permission or consent of that public entity.
- (F) The provisions of subsection [5-4-2\(E\)](#) of this chapter shall not apply to refueling activities and maintenance and repair of vehicles and equipment at temporary construction sites.
- (G) Any property owner or lessee working on property owned or leased by him or her shall be exempt from the Sunday prohibition as set forth in subsection [5-4-2\(E\)](#) of this chapter; provided, however, that the remaining provisions of this chapter shall apply. (Ord. 4053, 11-14-2000)

5-4-4 STATUTORY CONSTRUCTION:

In determining whether a disturbance has occurred, the "reasonable person standard" shall be utilized. (Ord. 4053, 11-14-2000)

5-4-5 TEMPORARY EXCEPTIONS:

(A) In the event that it is necessary to produce or emit objectionable noise for a temporary, limited period of time, the city council, after a public comment meeting, may permit an exception to the provisions of this chapter, and in that event under such terms, conditions and limitations as set forth in the council's approval.

(B) In the event that it is necessary to produce or emit objectionable noise for a temporary, limited period of time, and the necessity of producing or emitting said noise is of an emergency nature affecting the health or safety of persons or property, city council approval pursuant to subsection (A) of this section shall not be required; provided, however, that if said noise is to continue for a period of more than twenty four (24) hours, then upon application to the city manager or his designee, the city manager or his designee may permit an exception to the provisions of this chapter, and in that event under such terms, conditions and limitations as set forth in the foregoing approval. (Ord. 4053, 11-14-2000)

5-4-6 VIOLATIONS AND PENALTIES:

(A) The remedies herein are cumulative, and the city may proceed under one or more such remedies.

(B) Any person who is convicted of a violation of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section [1-3-1](#) of this code.

(C) Any owner, responsible party or other person having control over a structure or parcel of land who causes, permits, allows, facilitates or aids or abets any violations of any provision of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section [1-3-1](#) of this code.

(D) Any owner, responsible party or other person having control over a construction project or business who causes, permits, allows, facilitates or aids or abets any violations of any provision of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section [1-3-1](#) of this code.

(E) A violation of this chapter is hereby declared to be a public nuisance. In the event of a continuing violation of this chapter, the city attorney is hereby authorized to pursue a request for injunctive relief in a court of competent jurisdiction. In the event that an injunction is issued pursuant to this subsection, the court may also award reasonable attorney fees in favor of the city. (Ord. 4053, 11-14-2000)

Noise Ordinance: Reasonable Person Standard

Section

- 1 Purpose
- 2 Findings
- 3 Scope
- 4 Definitions
- 5 General Prohibition
- 6 Noises Prohibited
- 7 Exemptions
- 8 Enforcement
- 9 Penalties
- 10 Severability
- 11 Savings Clause
- 12 Effective Date

Chapter 5-4: Unreasonable Noise Prohibited

Section 5-4-1. Purpose. This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of the City of Prescott through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety; or causes public inconvenience, annoyance or alarm to reasonable persons of ordinary sensitivity.

Section 5-4-2. Findings. The City Council of the City of Prescott finds:

- A. Loud and raucous noise degrades the environment of the City to a degree that:
 - (1) is harmful to the health, welfare, and safety of its inhabitants and visitors;
 - (2) interferes with the comfortable enjoyment of life and property;
 - (3) interferes with the well being, tranquility, and privacy of the home; and
 - (4) both causes and aggravates health problems.
- B. Both the effective control and the elimination of loud and raucous noise are essential to the health and welfare of the City's inhabitants and visitors, and to the conduct of the normal pursuits of life, including recreation, work, and communication.

- C. The use of sound amplification equipment creates loud and raucous noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace, and freedom of inhabitants of, and visitors to, the City.
- D. Certain short-term easing of noise restrictions is essential to allow the construction and maintenance of structures, infrastructure, and other elements necessary for the physical and commercial vitality of the City.
- E. The obligation to draft regulations that affect speech in a content-neutral fashion is of paramount importance to protect the freedom of expression guaranteed by Article II, section 6, of the Arizona Constitution and the First Amendment of the United States Constitution. This ordinance enacts narrowly drawn, content-neutral regulations that are to be interpreted as such so as not to infringe upon constitutionally protected rights.

Section 5-4-3. Scope. This Ordinance applies to the control of all sound originating within the jurisdictional limits of the City.

Section 5-4-4. Definitions⁴.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

Emergency Work means any work performed for the purpose of preventing or alleviating physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.

City means the City of Prescott.

City Manager means the City Manager of City or the City Manager's designee⁵.

Noise Sensitive Area includes, but is not limited to, real property normally used for sleeping, or normally used as a school, church, hospital, or public library.

Person means any individual, firm, association, partnership, joint venture, or corporation.

Plainly audible means any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided hearing faculties.⁶

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.

Public space means any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

Residential area means any real property which contains a structure or building in which one or more persons reside, provided that the structure or building is properly zoned, or is legally nonconforming, for residential use in accordance with the terms and maps of the City's zoning ordinance.

Section 5-4-5. General Prohibition.

- A. No person shall make, continue, or cause to be made or continued:
 - (1) any unreasonably loud or raucous noise; or
 - (2) any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, within the jurisdictional limits of the City; or
 - (3) any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the neighborhood from which said noises emanate, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.
- B. Factors for determining whether a sound is unreasonably loud and raucous include, but are not limited to, the following:
 - (1) the proximity of the sound to sleeping facilities, whether residential or commercial;
 - (2) the land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
 - (3) the time of day or night the sound occurs;
 - (4) the duration of the sound; and
 - (5) whether the sound is recurrent, intermittent, or constant.

Section 5-4-6. Noises Prohibited. The following acts are declared to be per se violations of this Ordinance. This enumeration does not constitute an exclusive list:

- A. Unreasonable Noises⁷: The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous

or unusual noise, disturbance, commotion or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, park, or other place or building. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision.

- B. Vehicle Horns, Signaling Devices, and Similar Devices: The sounding of any horn, signaling device, or other similar device, on any automobile, motorcycle, or other vehicle on any right-of-way or in any public space of the City, for more than ten consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt from this prohibition.⁸
- C. Non-Emergency Signaling Devices: Sounding or permitting sounding any amplified signal from any bell, chime, siren, whistle or similar device, intended primarily for non-emergency purposes, from any place for more than ten consecutive seconds in any hourly period. The reasonable sounding of such devices by houses of religious worship, ice cream trucks, seasonal contribution solicitors or by the City for traffic control purposes are exempt from the operation of this provision.
- D. Emergency Signaling Devices: The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided in subsections (1) and (2), below.
 - (1) Testing of an emergency signaling device shall occur between 7:00 a.m. and 7:00 p.m. Any testing shall use only the minimum cycle test time. In no case shall such test time exceed five minutes. Testing of the emergency signaling system shall not occur more than once in each calendar month.
 - (2) Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, shall terminate within fifteen minutes of activation unless an emergency exists. If a false or accidental activation of an alarm occurs more than twice in a calendar month, the owner or person responsible for the alarm shall be in violation of this Ordinance.
- E. Radios, Televisions, Boomboxes, Phonographs, Stereos, Musical Instruments and Similar Devices: The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any

person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by, or is plainly audible at a distance of 50 feet from any person in a commercial, industrial area, or public space. The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs the peace, quiet, and comfort of neighbors in residential or noise sensitive areas, including multi-family or single-family dwellings.

F. Loudspeakers, Amplifiers, Public Address Systems, and Similar Devices:

The unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound between the hours of 10:00 p.m. and 7:00 a.m. on weekdays, and 10:00 p.m. and 10:00 a.m. on weekends and holidays in the following areas:

- (1) Within or adjacent to residential or noise-sensitive areas;
- (2) Within public space if the sound is plainly audible across the real property line of the public space from which the sound emanates, and is unreasonably loud and raucous.

This shall not apply to any public performance, gathering, or parade for which a permit has been obtained from the City.

G. Yelling, Shouting, and Similar Activities: Yelling, shouting, hooting, whistling, or singing in residential or noise sensitive areas or in public places, between the hours of 10:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities. This section is to be applied only to those situations where the disturbance is not a result of the content of the communication but due to the volume, duration, location, timing or other factors not based on content.⁹

H. Animals and Birds: Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns, controls or otherwise cares for the animal or bird.

I. Loading or Unloading Merchandise, Materials, Equipment: The creation of unreasonably loud, raucous, and excessive noise in connection with the loading or unloading of any vehicle at a place of business or residence.

J. Construction or Repair of Buildings, Excavation of Streets and Highways: The construction, demolition, alteration or repair of any building or the excavation of streets and highways other than between the hours of 7:00

a.m. and 7:00 p.m., on weekdays. In cases of emergency, construction or repair noises are exempt from this provision. In non-emergency situations, the City Manager¹⁰ may issue a permit, upon application, if the City Manager determines that the public health and safety, as affected by loud and raucous noise caused by construction or repair of buildings or excavation of streets and highways between the hours of 7:00 p.m. and 7:00 a.m. will not be impaired, and if the City Manager further determines that loss or inconvenience would otherwise result. The permit shall grant permission in non-emergency cases for a period of not more than three days. The permit may be renewed once for a period of three days or less.

- K. Noise Sensitive Areas - Schools, Courts, Churches, Hospitals, and Similar Institutions: The creation of any unreasonably loud and raucous noise adjacent to any noise sensitive area while it is in use, which unreasonably interferes with the workings of the institution or which disturbs the persons in these institutions; provided that conspicuous signs delineating the boundaries of the noise sensitive area are displayed in the streets surrounding the noise sensitive area.
- L. Blowers, and Similar Devices: In residential or noise sensitive areas, between the hours of 7:00 p.m. and 7:00 a.m., the operation of any noise-creating blower, power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, provided that the noise is unreasonably loud and raucous and can be heard across the property line of the property from which it emanates.
- M. Commercial Establishments Adjacent to Residential Property: Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under the control of the establishment, between the hours of 10:00 p.m. and 7:00 a.m. which is plainly audible at a distance of five feet from any residential property.

Section 5-4-7. Exemptions. Sounds caused by the following are exempt from the prohibitions set out in Section 5-4-6 and are in addition to the exemptions specifically set forth in Section 5-4-6:

- A. Motor vehicles on traffic ways of the City, provided that the prohibition of Section 5-4-6.B continues to apply.
- B. Repairs of utility structures which pose a clear and immediate danger to life, health, or significant loss of property.
- C. Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, provided that the prohibition contained in Section 6.D continues to apply.

- D. The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.
- E. Repairs or excavations of bridges, streets or highways by or on behalf of the City, the State, or the federal government, between the hours of 7:00 p.m. and 7:00 a.m., when public welfare and convenience renders it impractical to perform the work between 7:00 a.m. and 7:00 p.m.
- F. Outdoor School and Playground Activities. Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to, school athletic and school entertainment events.
- G. Other Outdoor Events. Outdoor gatherings, public dances, shows and sporting events, and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority.¹²

Section 5-4-8. Enforcement.¹³ The following individuals¹⁴ shall enforce this Ordinance: The City Manager or Police Chief will have primary responsibility for the enforcement of the noise regulations contained in this Ordinance. Nothing in this Ordinance shall prevent the City Manager or Police Chief from obtaining voluntary compliance by way of warning, notice or education.

Section 5-4-9. Penalties. The penalties for a violation of this Ordinance shall include the following:

- A. PENALTY – CRIMINAL: Any person who violates any provision of this chapter or the codes adopted pursuant to this chapter may be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in Section [1-3-1](#), by a fine not exceeding two thousand five hundred dollars (\$2,500.00) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment, at the discretion of the City judge. Each and every day any such violation continues shall be deemed and considered a separate offense.
- B. PENALTY – CIVIL: Upon conviction any person who violates any provision of this chapter thereof may be punished as provided in Sections [1-3-1](#) and [1-3-2](#) and subject to a civil penalty. Each and every day any such violation continues shall be deemed and considered a separate offense. (Ord. 4162, 10-30-2001, eff. 1-1-2002; amd. Ord. 4389, 4-13-2004; amd. Ord. 4602, 09-11-2007, eff. 10-15-2007; amd. Ord. 4678-0921, 12-09-2008, eff. 01-08-2009; Ord. 4904-1442, 9-23-2014)
- C. Any owner, responsible party or other person having control over a structure or parcel of land who causes, permits, allows, facilitates or aids or abets any violations of any provision of this chapter, shall be guilty of a

misdemeanor, and upon conviction thereof shall be punished as provided in section [1-3-1](#) of this code.

- D. Any owner, responsible party or other person having control over a construction project, business, or event who causes, permits, allows, facilitates or aids or abets any violations of any provision of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section [1-3-1](#) of this code.
- E. A violation of this chapter is hereby declared to be a public nuisance. In the event of a continuing violation of this chapter, the city attorney is hereby authorized to pursue a request for injunctive relief in a court of competent jurisdiction. In the event that an injunction is issued pursuant to this subsection, the court may also award reasonable attorney fees in favor of the city. (Ord. 4053, 11-14-2000)
- F. The remedies herein are cumulative and nonexclusive. In the event a defendant fails to comply with any civil enforcement action commenced under this section, the City may file a criminal charge against the defendant. Notwithstanding the foregoing, a civil enforcement action shall not be a prerequisite to the filing of a criminal charge, and a police officer, City Attorney, or other authorized City employee may elect to file criminal charges at any time, request injunctive relief, or pursue such other relief as may be available. Use of the civil code infraction alternative is not mandatory and shall be at the discretion of the City official undertaking enforcement action on an alleged violation of this code or other ordinances.

Section 5-4-10. Severability Clause. A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part, of this Ordinance shall not affect the validity of the remaining parts to this Ordinance.

Section 5-4-11. Savings Clause. A prosecution which is pending on the effective date of this Ordinance and which arose from a violation of an ordinance repealed by this Ordinance, or a prosecution which is started within one year after the effective date of this Ordinance arising from a violation of an ordinance repealed by this Ordinance, shall be tried and determined exactly as if the Ordinance had not been repealed.

Section 5-4-12. Effective Date. This Ordinance is effective on _____.

Endnotes:

1. IMLA staff attorneys draft the model ordinances working in conjunction with legal experts from the United States and Canada who specialize in the particular local government issues covered by the ordinances. IMLA is a non-profit, professional organization based in Washington, D.C. that has been an advocate and valuable legal resource for local government attorneys since 1935. For more information see <http://www.imla.org>.

2. Several Oregon cities have noise ordinances based on decibel standards and while these ordinances are more objective than the reasonable person standard, they have their set own problems. One is the cost of, and training regarding the operation and use of, sound level meters and the equipment to test them, which can be prohibitive. (Test equipment is necessary to ensure the meter is working properly; frequent testing is required.) Meters may be available from local vendors for well under \$100 but a meter capable of being certified for prosecutions can be several times those locally available. In addition, several meters may be necessary in order to allow different officers in the field to immediately respond to noise complaints. In years past, the Oregon Department of Environmental Quality provided, through its Noise Control Program, assistance to local governments for enforcement of decibel-based noise regulations. That program no longer exists. See <http://www.deq.state.or.us/aq/noise/index.htm>.

Moreover, enforcement issues are more complicated with decibel based ordinances. Sound meters measure the loudest sound but are unable to identify the sound sources. These types of source-discrimination issues can be resolved but they can also lead to doubts about a noise violation. A more significant enforcement concern is the time it takes to set up the equipment and make measurements. Such delays can allow the noise offender to avoid detection by ceasing operation after arrival of the noise enforcement officer but before the equipment is activated. A decibel-based ordinance also makes it impossible for charges to be filed based upon citizen observations. Even if a citizen has recorded or videotaped the offensive activity, an ordinance based solely on decibels would preclude a conviction based on such citizen-produced evidence.

The plainly audible standard as expressed in certain sections of this ordinance cures many of the problems associated with a decibel-based ordinance. No investment is needed to purchase and maintain expensive sound measuring equipment. No technical training is required. There are no concerns about having access to the specialized equipment when complaints are filed. This ordinance can be enforced on credible citizen complaints without a noise enforcement officer being present at the time of the offense.

3. The authority of a city to enact reasonable legislation to regulate conduct detrimental to the public interest is well-recognized. See *City of Portland v. Gatewood*, 76 Or App 74, 79, 708 P2d 615 (1985), rev den 300 Or 477 (1986).

4. This ordinance was written with the philosophy that common words should not be defined unless the common meaning is expanded or altered. The definitions are listed simply in alphabetical order, without numbering so that additions and deletions can be made at any time without requiring extensive retooling of the ordinance. Definitions set forth here should be compared to definitions existing in other ordinances so that conflicts between definitions are minimized.

5. For those cities without a city manager, substitute the position of the employee who has authority to make decisions under the ordinance or is primarily responsible for enforcement. The city manager is also mentioned in sections 6.J and 8.A and similar changes will be required in those sections. Some jurisdictions may want to vest authority to enforce the ordinance in a "noise enforcement officer." If so, the following definition should be added and the definition of City Manager should be deleted. Sections 6.J and 8.A would then be changed by substituting "Noise Enforcement Officer" for "City Manager."

Noise Enforcement Officer means the person appointed by the City Council to enforce the provisions of this ordinance or that officer's designee.

The city should make sure that every officer has reviewed appropriate materials to assist in enforcement of this ordinance, has easy access to the ordinance, and has at least a basic understanding of the possible constitutional problems which may be encountered when they respond to a noise complaint.

6. As an example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the detection of the rhythmic bass component of the music is sufficient to verify plainly audible sound. The noise control officer need not determine the title, specific words, or the artist performing the song.

The plainly audible standard provides a fairly objective, enforceable and understandable means for legislating against problem noise levels. The detection device used to enforce the standard is the same device used to initially detect offensive noise levels in the vast majority of circumstances – the ordinary human ear. As used in this ordinance, the plainly audible standard prohibits noise from being generated that is detectable by the human ear of normal sensitivity in certain locations at certain times. See, for example, section 6.E.

Multiple people with adequate hearing standing at a location should reach identical conclusions regarding whether they detected sound at an area, and this makes the plainly audible standard an objective standard. There is no significant room for subjective judgment in the calculation.

7. The phrase “unreasonable noise” as used in the state’s disorderly conduct statute, ORS 166.025, has been the subject of much litigation. In *State v. Marker*, 21 Or App 671, 677, 536 P2d 1273 (1975), the Oregon Court of Appeals held:

“We think that the proper construction of the word “noise” is as follows:

‘* * * When the word ‘noise’ in the statute is properly construed consistent with the First Amendment and traditional views, it encompasses communications made in a loud manner only when there is a clear and present danger of violence or when the communication is not intended as such but is merely a guise to disturb persons.” In re Brown, 9 Cal3d 612, 619, 108 Cal Rptr 465, 469, 510 P2d 1017 (1973), cert denied 416 US 950 (1974).” (Emphasis added.)

In order to comply with the holding in this and other Oregon cases (see endnotes 8 and 9), loud and raucous noise, which could be construed as encompassing communication, may only be prosecuted when it can be shown that the noise is not intended as communication but is merely a guise to disturb persons.

The word “unreasonable” is “commonly defined as: not conformable to reason, irrational, not governed or influenced by reason, immoderate, excessive, exorbitant, foolish, unwise, absurd, silly, preposterous, senseless and stupid. (Citations omitted.) *State v. Marker*, *supra*, at 675.

The word “noise” most commonly means “a sound; loud, confused, or senseless shouting; any sound that is undesired or that interferes with something to which one is listening; an unpleasant sound; a sound that lacks agreeable music quality or [676] is noticeably loud, harsh or discordant; inarticulated and confused sound.” (Citations omitted.) *State v. Marker*, *supra*, at 675-6.

8. The Oregon Court of Appeals found similar language in the Eugene City Code to violate the constitutional protection of free speech. The case involved protesters demonstrating for and against the Gulf War. The demonstrators held up signs inviting motorists to honk their horns in support or opposition to the war. Honking motorists were cited for violating a Eugene code section which adopted ORS 815.225(1)(b): "A person commits the offense of violation of use limits on sound equipment if the person does any of the following: * * * * "(b) Uses a horn otherwise than as a reasonable warning or makes any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device." The court found that "causing mechanical device to make sound does not always constitute speech, (but) motorists who honked their horns to demonstrate support or disapproval of opinions on political issue of Persian Gulf War were expressing protected speech." *City of Eugene v. Powlowski*, 116 Or. App. 186, 840 P2d 186 (1992).

Use of this section to prosecute a noise violation should be carefully evaluated in each case. This ordinance section should only be used when it can be shown that the noise was not intended as communication but was, instead, "merely a guise to disturb persons." *State v. Marker*, 21 Or App 671, 678, 536 P2d 1273 (1975). See also endnote 7.

9. The Oregon Court of Appeals held in *City of Eugene v. Lee*, 177 Or. App. 492, 34 P3d 690 (2001) that street preaching in a loud voice was not a violation of Eugene's disorderly conduct ordinance - which was modeled on the state's disorderly conduct statute, ORS 166.025(1). The court determined that the preaching was not violent, tumultuous, or threatening behavior and a conviction would violate the preacher's right of free expression. Absent evidence that the preacher had engaged in, or was about to engage in, physical acts of aggression, a conviction under the ordinance was not possible.

"If the term 'noise' includes expression, then the ordinance prohibits expression as a means of achieving proscribed effects . . . and subjecting it to a test for overbreadth (in violation of constitutional free speech protections). The determination of overbreadth would, in turn, depend on the scope and content of 'unreasonable,' a term that is not defined by the ordinance. Contextually, 'unreasonable' can be defined by reference to the ordinance's purposes, viz., to avoid 'public inconvenience, annoyance, or alarm.' That is, 'unreasonable noise,' including expression, connotes sound that causes public inconvenience, annoyance, or alarm. Sound can be inconvenient, annoying, or alarming for a variety of reasons, including its volume and duration, as well --- significantly --- as its content. Thus, if 'noise' . . . includes expression, the ordinance is overbroad as prohibiting speech that is 'unreasonable' as 'inconvenient,' 'annoying,' or 'alarming' in its content. (Citations and footnotes omitted.) *Lee, supra*, at 501.

10. See endnote 5.

11. The Noise Control Act of 1972, 42 U.S.C. § 4901, et seq., at 42 U.S.C. §§ 4916-17 provides for the development of national standards for railroad and motor carrier noise emissions standards. Oversight responsibility was initially given to the EPA but that has been shifted to the Federal Department of Transportation. The Department of Transportation's Federal Railway Administration issued a revised final rule effective September 17, 2006, regarding the use of train horns at railway crossings. See "Use of Locomotive Horns at Highway-Rail Grade", 49 CFR Parts 222 and 229; Federal Register, Vol. 71, No. 159, Thursday, August 17, 2006, page 47614.

The final rule provides for six types of quiet zones, ensures the involvement of state agencies and railroads in the quiet zone development process, gives communities credit for pre-existing safety warning devices at grade crossings and addresses other issues including pedestrian crossings within a quiet zone.

The establishment of a new quiet zone requires, at a minimum, that each grade crossing be equipped with

flashing lights and gates. Additional safety measures may be required to compensate for the absence of the horn as a warning device. New quiet zones can be in effect 24-hours a day or just during the overnight period between 10 p.m. and 7 a.m.

Communities with a whistle ban in effect on Oct. 9, 1996, the date Congress directed FRA to specifically address the issue of existing bans, and on Dec. 18, 2003, the date the Interim Final Rule was published, will be able to continue to keep the train horns silent for at least an additional five to eight years as they plan for and install any additional necessary safety measures.

Communities with a whistle ban created after Oct. 9, 1996, and in effect on Dec. 18, 2003, will have one year to install any additional necessary safety measures before the train horns will start sounding again.

The rule also establishes the first-ever maximum train horn volume level and will reduce the amount of time the horn is sounded, which will be beneficial to communities that decide not to pursue quiet zones.

The Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings is available at the U.S. Department of Transportation Docket Management System web site at <http://dms.dot.gov/> docket number FRA-1999-6439-3923. Additional information is located at the FRA web site at <http://www.fra.dot.gov/>.

The holding in an earlier Ninth Circuit case is now questionable as to the authority of the state or local communities to exercise control of train horns outside the regulatory scheme embodied in the new rule cited above. See *Southern Pacific Transp. Co. v. Public Utility Com'n of State of Oregon*, 9 F.3d 807 (9th Cir. 1993). Oregon law permitting Public Utility Commission to ban sounding of train whistles under some conditions, and subsequent Commission rule with respect thereto, were not preempted by the federal Noise Control Act, which directs the Environmental Protection Agency (EPA) to establish standards for railroad noise emissions, as the EPA has not enacted any regulation governing locomotive whistles, and has expressly exempted locomotive whistle standards from its regulatory scheme and invited regulation by individual states.

The Oregon Department of Transportation has promulgated the following rules regarding train whistles:

OAR 741-125-0020 Sounding of the Train Whistle at Grade Crossings

- (1) The sounding of the locomotive whistle in advance of railroad-highway grade crossing equipped with operating automatic gates, flashing lights, and audible protective devices, conforming to applicable Department's standards, is not required, unless specifically ordered by the Department.
- (2) Upon petition of a public authority or a railroad, or on its own motion, the Department may enter an Order, after hearing if necessary, prohibiting the sounding of the locomotive whistle in advance of specified railroad-highway grade crossings equipped with automatic gates, flashing lights, and audible protective devices.
- (3) When an order prohibiting the sounding of the locomotive whistle in advance of certain railroad-highway grade crossings has been entered by the Department or the Public Utility Commission, the railroad shall provide written notification of its employees of the prohibition and shall install appropriate signing adjacent to its tracks to clearly designate the segment or segments of line to which the whistle-sounding prohibition applies.

12. Additional exemptions for certain activities are available through the issuance of a permit. Permit systems have been upheld as constitutionally valid exercises of city authority. In *Ward v. Rock Against Racism*, 491 U.S. 781 (1989), the Supreme Court upheld a municipal noise ordinance designed to ensure that music performances in the municipal band shell did not disturb surrounding residents. The Court

found that the city's ordinance was content-neutral and that "it can no longer be doubted that government "ha[s] a substantial interest in protecting its citizens from unwelcome noise." Ward, 491 U.S. at 796 (citations omitted). The Court further opined that this interest was perhaps at its greatest when the government seeks to protect its citizens' well-being, tranquility, and privacy in their homes. Ward, 491 U.S. at 796. See also, Stokes v. City of Madison, 930 F.2d 1163 (7th Cir. 1991), where an ordinance specifying times when sound amplification devices could be used in public spaces and requiring a permit was a valid exercise of reasonable time, place and manner restrictions because no permit had ever been denied. Keep in mind though that permitting schemes must not allow for officials to use unfettered discretion in issuing permits. In Saia v. State of New York, 334 U.S. 558 (1948), the Supreme Court invalidated an ordinance which prohibited the use of amplifying devices in public except with the permission of the chief of police. The Court held that the ordinance could not be upheld without prescribing standards for the exercise of the chief's discretion.

13. The responsibility for enforcing the noise ordinance, and ability to issue citations, should be given to an individual, and his or her designees, who has the ability to respond to noise complaints in a timely manner. Often city police officers are charged with the responsibility of enforcing noise ordinances and standards. It is the responsibility of the individual charged with enforcing the ordinance to make sure that those who respond to complaints on a day to day basis understand what is and what is not a violation.

14. See endnote 5 if some other official is to enforce or administer the ordinance.

Noise Ordinance for the City of Mesa, Arizona (as of 2001)

Chapter 12 - Offensive, Excessive, and Prohibited Noises

SECTION 6-12-1: DECLARATION OF POLICY:

It is hereby declared to be the policy of the City to prohibit excessive or offensive noises from all sources subject to its police power. Above certain levels, excessively loud noises are detrimental to the health, safety, and welfare of the citizens of the City, and in the public interest such noises should be eliminated. (2034)

SECTION 6-12-2: OFFENSIVE AND EXCESSIVE NOISE VIOLATION:

It shall be unlawful and a violation of this Chapter for any person to make, continue, or cause to be made or continued or to allow or permit any excessive or offensive noise as defined in Section 6-12-3 and enumerated in Section 6-12-5 or any prohibited noise enumerated in Section 6-12-6. (2034)

SECTION 6-12-3: DEFINITIONS:

A-WEIGHTED SOUND LEVEL: The sound pressure level in decibels as measured on a sound level meter using the A-weighting network in accordance with the sound level measurement criteria set forth in Section 6-12-4. The level so read is designated as dB(A) or dBA. (2034)

ARTERIAL STREET: A street of a major significance to the community which is designed to carry a substantial volume of traffic. All section line roads, plus Main Street and Center, shall be designated as arterial streets. (2034)

DECIBEL (dB): A unit for measuring the volume of a sound equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (20 micronewtons per square meter), denoted as dB. (2034)

EMERGENCY VEHICLE: Vehicles of the Fire, Police, and public service departments and legally authorized ambulances and emergency vehicles of State

departments or any political subdivisions thereof and vehicles of public service corporations. (2034)

EMERGENCY WORK: Any work performed to prevent or alleviate physical trauma or property damage threatened or caused by an emergency which has or may result in a disruption of service and which is necessary to protect the health, safety, and welfare of persons or property. (2034)

EXCESSIVE NOISE: Any sound measured according to the criteria in Section 6-12-4 which exceeds the levels set out in Section 6-12-5. In the absence of specific maximum noise levels, a noise level is excessive if it exceeds the allowable noise level for the zoning district in which it is located by five (5) dBA or more. (2034)

GROSS VEHICLE WEIGHT RATING (GVWR): The value specified by the manufacturer as the recommended maximum loaded weight of a single-motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used. (2034)

Leq: The constant level that over a given period transmits to the receiver the same amount of acoustic energy as the actual time-elapsed sound. (2034)

LEGAL HOLIDAY: Those holidays so designated by the Mesa City Council in its Personnel Rules. (2034,2610)

LOCAL STREET: Any street not designated as an arterial street. (2034)

MOTOR VEHICLE: Every self-propelled device in, upon, or by which any person or property is, or may be, transported upon a public highway, excepting devices used exclusively upon stationary rails or tracks and aircraft. (2034)

MUFFLER: A device for abating the sound of escaping gases from an internal combustion engine. (2034)

NOISE: The same meaning as "sound pressure level" as hereinafter defined. (2034)

OFFENSIVE NOISE: Any sound emitted across a property line or that projects more than fifty feet (50') from its source within any multi-residential, office, or commercial complex which is of sufficient volume and duration that it would cause discomfort or annoyance to a reasonable person of normal sensitivity. (2034)

SITE-SPECIFIC SOURCE OF NOISE: A source of sound which is found on a specific site or tract of land and which is confined to that site even though the specific source of the sound generation may be mobile on the site or tract. (2034)

SOUND: Temporal and spatial oscillation in pressure, particle displacement, particle velocity, or other physical parameter in a medium with internal forces that causes progressively alternative compression and rarefaction of that medium and which propagates at finite speed to distant points and can evoke an auditory sensation. (2034)

SOUND LEVEL METER: An instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting networks used to measure sound pressure levels. (2034)

SOUND PRESSURE: The instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space as produced by sound energy. (2034)

SOUND PRESSURE LEVEL: Twenty (20) times the logarithm to the base ten (10) of the ratio of RMS sound pressure to the reference pressure of twenty (20) micropascals ($20 \times 10^{-N}/m$). The sound pressure level is denoted L_p or SPL and is expressed in decibels (db). (2034)

SECTION 6-12-4: SOUND LEVEL MEASUREMENT CRITERIA:

For the purpose of enforcement of the provisions of this Chapter, noise levels shall be measured on the A-weighted scale with a sound level meter satisfying at least the applicable requirement for Type 2 sound level meters as defined in American National Standard S1.4-1971 or the most recent revisions thereof. Prior to measurement, the meter shall be set for slow response speed, except that for rapidly varying sound levels, fast response speed may be used. Prior to measurement, the meter shall be verified and calibrated according to the manufacturer's specifications. (2034)

SECTION 6-12-5: ENUMERATION OF OFFENSIVE OR EXCESSIVE NOISES:

The following enumerated acts or conditions may produce offensive or excessive noise which violates the provisions of this Chapter. Enumeration, or the lack thereof,

shall not, however, preclude other sources of noise which are offensive and/or excessive from also being in violation of the provisions of this Chapter. (2034)

(A) Land Use Noise.

1. Classification of Use Districts (Residential, Commercial, Industrial). Land use zoning district classifications shall be as set out in Title 11 of the Mesa City Code and shall for purposes of this Chapter be distinguishable as Residential, Commercial, and Agricultural/Industrial land use classifications, within which sound levels of Table 1 below shall be locally measurable and applied by the use of Leq levels as defined by Section 6-12-3 and measured in accordance with the methods set forth in Section 6-12-4 for purposes of evaluating an alleged violation of this Chapter. (2034)

2. Violations. It shall be unlawful and a violation of this Chapter for any person to operate or to permit to be operated any site-specific source of sound which, when measured at any point on the property line where the noise emission is generated or at any point on the property line of the property affected by the noise emission or any point within the property affected by the noise emission: (2034)

(a) Creates a sound level in excess of its ambient sound pressure level (Leq) limit, indicated on Table 1 below: (2034)

TABLE 1 - LIMITING SOUND LEVELS FOR LAND USE DISTRICTS	
<u>Zoning District Classifications</u>	<u>Leq Limits, dBA</u>
(Residential) R1-90, R1-43, R1-35, R1-15, R1-9, R1-7, R1-6, R-2, R-3, R-4	60 dBA
(Commercial or Business) O-S, C-1, C-2, C-3	65 dBA
(Agricultural/Industrial) AG, M-1, M-2*, PF	70 dBA
*Uses required to be approved by Special Permit in accordance with Section 11-7-4 of the Mesa Zoning Code shall be classified as Residential, Commercial, or Agricultural/Industrial for purposes of this Chapter by the City Council at the time of such approval. (2034)	

The Leq limits specified in Table 1 are Leq for a twenty-four- (24-) hour time interval. Partial Leq levels may be obtained as necessary to assure an accurate indication of the representative sound environment for the site. (2034)

(b) Sound projected from property within one (1) use district into property within another use district of a lesser sound level limit shall not exceed such lesser sound level limit. (2034)

(B) Vehicle Noise.

1. Vehicle Noise Limits. No person shall operate either a motor vehicle or combination of vehicles at any time upon any paved surface or under any condition of grade, load, acceleration, or deceleration in such a manner as to exceed the following noise limit for the category of motor vehicle, based on a distance of fifty feet (50') or fifteen (15) meters from the center of the paved surface: (2034,3770)

SOUND PRESSURE LEVEL LIMITS FOR MOTOR VEHICLES (Measured at 50 Feet or 15 Meters)		
<u>Vehicle Class</u>	<u>Operated on a Local Street</u>	<u>Operated on a Paved Surface or Arterial Street</u>
Motor vehicles with a manufacturer's gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) of 10,000 pounds or more or any combination of vehicles towed by such motor vehicle.	86 dBA	90 dBA
Any other motor vehicle or any combination of vehicles towed by any such motor vehicle.	76 dBA	82 dBA
Motorcycles operated upon the public streets, roads, or highways.	82 dBA	86 dBA

2. Vehicle Repairs. It shall be unlawful for any person within any residential area of the City to repair, rebuild, or test any motor vehicle between the hours of ten (10:00) P.M. of one day and seven (7:00) A.M. of the next day in such a manner as to create an excessive or offensive noise. (2034)

3. Mufflers. No person shall operate or cause to operate any motor vehicle unless the exhaust system of such vehicle is: (2034)

(a) Free from defects which may affect sound level magnification; (2034)

(b) Equipped with a muffler; and (2034)

(c) Not modified in a manner which will amplify or increase the sound level emitted by the motor of such vehicle above that emitted by a muffler of the type originally installed on the vehicle as manufactured for initial sale. (2034)

(C) Construction Noise. (2034)

1. It shall be unlawful for any person within a residential zone or within a radius of five hundred feet (500') therefrom to operate construction, demolition, or excavation equipment; perform any outside construction or repair work on buildings, structures, or projects; or operate any pile driver, power shovel, pneumatic hammer, derrick, power hoist, or any other construction-type device in order to erect (including excavating), demolish, alter, or repair any building, street, or highway other than between the hours of four (4:00) A.M. and six (6:00) P.M. on weekdays, except none shall be operated on Sunday or legal holidays, during the months of May, June, July, August, or September and between the hours of six (6:00) A.M. and six (6:00) P.M. on weekdays, but not Sunday and legal holidays, during the remainder of the months of the year, except for cases of urgent necessity or emergency work which are in the interest of public health and safety, and then only with a permit from the Superintendent of Building Inspections. The permit may be granted for a period not to exceed three (3) days or less while the emergency exists and may be renewed for periods of three (3) days or less while the emergency continues. (2034)

2. If the Superintendent of Building Inspections should determine that the public health and safety will not be impaired by the erection, demolition, alteration, or repair (including excavation) of any building or the excavation of streets and highways within the hours of six (6:00) P.M. and four (4:00) A.M. during the months of May, June, July, August, and September and within the hours of six (6:00) P.M. and six (6:00) A.M. during the rest of the months of the year, and if the Superintendent of Building Inspections shall further determine that loss or inconvenience would result to any party in interest, the Superintendent of Building Inspections may grant permission for such work to be done within the above hours upon application being made at the time the permit for the work is awarded or during the progress of the work. (2034)

(D) Other Noise Sources. (2034)

1. Schools, Hospitals, and Churches. It shall be unlawful for any person to create an offensive or excessive noise on any street, sidewalk, or public place adjacent to any school, institution of learning, or church while the same is in use or adjacent to any hospital which interferes with the workings of such institution provided that conspicuous signs are displayed on such street, sidewalk, or public place indicating the presence of a school, church, or hospital. (2034)

2. Animals and Fowl. No person shall keep or maintain or permit the keeping of upon any premises owned, occupied, or controlled by such person any dog, fowl, cow, or other animal otherwise permitted to be kept which creates an offensive or excessive noise. (2034)

3. Machinery, Equipment, and Fans. It shall be unlawful for any person to operate any stationary engine or machinery, equipment, pump, blower, fan, or similar mechanical device in any manner as to exceed the noise levels established in Section 6-12-5(A). (2034)

4. Loading of Vehicles and/or Opening or Destruction of Containers. It shall be unlawful for any person to load or unload any vehicle or to open or destroy bales, boxes, crates, or other containers in such a manner as to create an excessive or offensive noise. (2034)

SECTION 6-12-6: PROHIBITED NOISES:

The following activities shall be prohibited within the corporate limits of the City: (2034)

(A) Radios, Phonographs, Televisions, Musical Instruments, and Other Similar Devices. The operation of a radio, phonograph, television, musical instrument, or other similar device between the hours of ten (10:00) P.M. of one day and seven (7:00) A.M. of the following day in such a manner so as to create an offensive or excessive noise plainly audible at a distance of fifty feet (50') from the building, structure, or property in or on which it is located. (2034,3770)

(B) Hawkers, Peddlers, and Amplification for Advertising. The use of outcry, musical instruments, recordings, amplification, or similar devices to produce or reproduce sound for the purpose of advertising or attracting the attention of the public to any building, vehicle, or person. The provisions of this Subsection shall not be construed to prohibit the selling by outcry of merchandise, food, and beverages at authorized sporting events, parades, fairs, circuses, and other similar events or to affect any person who is a participant in a school band or duly authorized parade or who has been otherwise duly authorized to engage in such conduct. (2034)

(C) Squealing of Tires. The operation of any motor vehicle in a manner which creates squealing of tires on a paved surface. Violations of this subparagraph (C) are civil traffic violations, not criminal misdemeanors. (2034,3770)

(D) Sound Amplification Systems in Vehicles; Limitations on Use. (3770)

1. For the purposes of this Section, "sound amplification system" means any device, instrument, or system, whether electrical or mechanical or otherwise, for amplifying sound or for producing or reproducing sound, including but not limited to any radio,

stereo, musical instrument, phonograph, or sound or musical recorder or player. (3770)

2. Except as authorized by law, no person shall operate or permit the operation of any sound amplification system in or on a vehicle which: (3770)

(a) Can be heard outside the vehicle from fifty (50) or more feet; or (3770)

(b) Disturbs the quiet, comfort, or repose of any person in the vicinity. (3770)

3. Subsection (2) of this Section shall not apply to: (3770)

(a) An authorized emergency vehicle; (3770)

(b) A vehicle operated by a gas, electric, communications, or water utility company, or governmental entity; or (3770)

(c) A vehicle used for advertising in a parade or in a political or other special event as authorized by the City; (3770)

(d) When the sound amplification system is being operated to request assistance of an emergency nature or to warn of a hazardous situation. (3770)

4. Violations of this subparagraph (D) are civil traffic violations, not criminal misdemeanors. (3770)

SECTION 6-12-7: EXEMPTIONS FROM NOISE LEVEL REGULATION:

The following uses and activities shall be exempt from noise level regulations: (2034)

(A) Safety signals and alarm devices, storm warning sirens or horns and the authorized testing of such equipment, emergency vehicle sirens, any electronic equipment or horns used when responding to an emergency, and emergency pressure-relief valves. (2034)

(B) Noises resulting from emergency work as defined in Section 6-12-3. (2034)

(C) Any noise created by any City of Mesa vehicles, equipment, or facilities while being operated for official business. (2034)

(D) Noises from normal operation of railroad trains. (2034)

(E) Church chimes and/or church music. (2034)

(F) Crowd noises resulting from activities such as those planned for school, governmental, or community groups or duly authorized by such groups. (2034)

(G) Organized sporting events. (2034)

(H) Noises created by any aircraft operated in conformity with or pursuant to federal law, federal air regulations, or air traffic control instructions issued pursuant to or within duly adopted federal air regulations, together with any noise created by aircraft operating under or pursuant to declaration of any emergency under federal air regulations. (2034)

SECTION 6-12-8: ADDITIONAL REMEDY:

As an additional remedy, the operation or maintenance of any device, instrument, vehicle, or machinery in violation of any provision of this Chapter which endangers the comfort, repose, health, or peace of residents in the area shall be deemed, and is declared to be, a public nuisance and shall be subject to abatement as such. (2034)

SECTION 6-12-9: SEVERABILITY:

If any action, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof. (749,1635,2034)

SECTION 6-12-10: PENALTY:

Any person who shall violate any of the provisions of this Chapter or of the Mesa City Code as amended here shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00) or by imprisonment in the City jail for a period not exceeding six (6) months, or by both such fine and imprisonment, and each day of violation continued shall be a separate offense, punishable as hereinabove described. (1635,2034,2466)

ARTICLE II. - SPECIAL NOISE VIOLATIONS

Sec. 19-24. - [Purpose.]

The purpose of this article is to promote the health and general welfare of the citizens and businesses of the city by protecting neighborhoods.

(Ord. No. 3912, § 2, 9-28-10)

Sec. 19-25. - Definitions

(A) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *"A" band level* means the total sound level of all noise as measured with a sound level meter using A-weighting network. The unit is the dB(A).
- (2) *Ambient noise* means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources, near and far. For the purpose of this article, ambient noise level is the level obtained when the noise level is averaged over a period of fifteen (15) minutes without inclusion of noise from isolated identifiable sources, at the location and time of day near that at which a comparison is to be made. Averaging may be done by instrumental analysis in accordance with American National Standard S. 13-1971, or may be done manually as follows:
 - (a) Observe a sound level meter for five (5) seconds and record the best estimate of central tendency of the indicator needle, and the highest and lowest indications.
 - (b) Repeat the observations as many times as necessary to ensure that observations are made at the beginning and the end of the fifteen (15) minute averaging period and that there are at least as many additional observations as there are decibels between the highest high indication and the lowest low indication.
 - (c) Calculate the arithmetical average of the observed central tendency indications.
- (3) *Business* means either a corporation, limited liability corporation, partnership, any other type of fictitious person or in the event the business is not owned by a fictitious entity, the individual owners. A business does not mean a governmental agency or entity.
- (4) *Decibel* means a sound pressure that is twenty (20) times the logarithm to the base 10 of the ratio of the pressure of sound to the reference pressure, 2×10^{-5} Newton/meter².
- (5) *Dwelling* means building, which is designed for residential purposes with the exception of any residential unit located within a hotel, resort, or other transitory lodging development.
- (6) *Frequency*. "Frequency" of a function periodic in time shall mean the reciprocal of the primitive period. The unit is the hertz and shall be specified.
- (7) *Impulse noise* means a noise of short duration, usually less than one (1) second, with an abrupt onset and rapid decay.
- (8) *Microbar* means a unit of pressure commonly used in acoustics and is equal to one (1) dyne per square centimeter.
- (9) *Period* means "Period" of a periodic quantity shall mean the smallest increment of time for which the function repeats itself.

- (10) *Periodic quantity* means oscillating quantity, the values of which recur for equal increments of time.
- (11) *Pure tone noise* means any noise which is distinctly audible as a single pitch (frequency) or set of pitches as determined by an enforcement officer.
- (12) *Residential District* means any property zoned Single-family residential district (R1-190, R1-130, R1-70, R1-43, R1-35, R1-18, R1-10, R1-7, R1-5), Two-family residential district (R-2), Multifamily residential district (R-3), Townhouse residential district (R-4), Multiple-family residential district (R-5), Manufactured home district (M-H), or any specific portion of a Planned community district (PCD) or Planned Residential Development District (PRD) with a comparable or underlying zoning district that consists exclusively of any of the aforementioned residential districts. For the purposes of this article, the definition of residential districts specifically excludes, but the exclusion is not limited to, properties or dwellings with the following Zoning districts or designations: Resort district (R-4R), Service residential district (S-R), Downtown district (D) and downtown sub-districts, Planned block development district (PBD), Planned unit development district (PUD).
- (13) *Sound level*. "Sound level" (noise level), in decibels (dB) is the sound measured with the A - weighting and slow response by a sound level meter.
- (14) *Sound level meter* means an instrument including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of sound levels which satisfies the pertinent requirements in American Standard Specifications for Sound Level Meters S1.4-1971 or the most recent revision thereof.
- (15) *Unreasonable noise* means noise that a reasonable person of normal sensibilities would find excessive and that can be heard at least one hundred (100) feet from the business.

(Ord. No. 3912, § 2, 9-28-10)

Sec. 19-26. - Unreasonable noise created by businesses that serve alcohol or provide live entertainment prohibited.

- (A) It shall be unlawful for a business that serves alcohol or provides live entertainment to create unreasonable noise that through its operations disturbs the peace or quiet of a residential district that contains dwellings.
- (B) For making a determination that noise is unreasonable pursuant to this section, a reasonable person of normal sensibilities shall include Scottsdale police officers or other city employees designated by the City Manager to enforce this section.
- (C) A sound level meter may be used, but is not required, to assist in determining whether noise is unreasonable or not.
- (D) It shall be a rebuttable presumption under this article that noise levels over sixty-eight (68) db(A) are considered unreasonable.
- (E) The following activities are exempt from the provisions of this section:
 - (1) Non-amplified noises resulting from the activities of the patrons of a business.
 - (2) An event being held pursuant to a city issued special events permit provided that the business is operating in accordance with the conditions of that permit.

(Ord. No. 3912, § 2, 9-28-10)

Sec. 19-27. - Measurement criteria.

For the purpose of enforcement of the provisions of this article, if a sound level meter is used, noise level shall be measured on the A-weighted scale with a sound level meter satisfying at least the applicable requirement for Type 1 sound-level meters as defined in American National Standard S 1.4-1971 or the most recent revisions thereof. The meter shall be set for slow response speed, except that for impulse noises or rapidly varying sound levels, fast response speed may be used. Prior to measurement, the meter shall be verified, and adjusted to ± 0.3 decibel by means of an acoustical calibrator. The ambient sound level shall be verified and noted.

(Ord. No. 3912, § 2, 9-28-10)

Sec. 19-28. - Penalties for creating unreasonable noise created by businesses that serve alcohol or provide live entertainment.

- (A) It shall be a civil offense to violate subsection A of section 19-26 above.
- (B) The penalty for a first violation shall be five hundred dollars (\$500.00).
- (C) The penalty for a second violation within one (1) year shall be one thousand five hundred dollars (\$1,500.00).
- (D) The penalty for a third or subsequent violation within one (1) year shall be two thousand five hundred dollars (\$2,500.00).
- (E) The penalty for a business that violates the noise conditions of its city issued special events permit shall be two thousand five hundred dollars (\$2,500.00).

(Ord. No. 3912, § 2, 9-28-10)

Sec. 19-29. - Authority to issue civil complaints.

- (A) The City Manager or designee, a Scottsdale police officer or the City Attorney may issue civil complaints to enforce Section 19-26.
- (B) Any person authorized pursuant to this section to issue a civil complaint may also issue a notice of violation specifying actions to be taken and the time in which they are to be taken to avoid issuance of a civil complaint.

(Ord. No. 3912, § 2, 9-28-10)

Sec. 19-30. - Habitual offenders.

- (A) Any business as defined in this article who commits a violation of subsection A of section 19-26 above after having previously been found responsible by a court on four (4) or more separate occasions for committing a civil violation of this article within a twenty-four-month period, whether by admission, by default, or by judgment after a hearing shall be deemed a habitual offender and shall be guilty of a class one misdemeanor and punished by a minimum fine of ten thousand dollars (\$10,000.00) and a maximum fine of twenty thousand dollars (\$20,000.00) pursuant to A.R.S. Section 13-305 except that the punishment for a non-fictitious person under this section requires in addition to any other penalties imposed by the court a fine of two thousand five hundred (\$2,500.00).

(Ord. No. 3912, § 2, 9-28-10)

Sec. 19-31. - Remedies non-exclusive.

The remedies provided for in this article are not exclusive and nothing shall preclude the City from pursuing other authorized legal remedies against violators of this article that may include but are not limited to conditional use permit revocation and enforcement of other applicable federal, state, county and city laws.

(Ord. No. 3912, § 2, 9-28-10)

Secs. 19-32—19-34. - Reserved.