

CITY COUNCIL REPORT

DATE: December 8, 2020
TO: Mayor and Councilmembers
Cc: Dawn Prince, Interim City Manager; Leadership Team
FROM: Kraig Fullen, Chief of Police
SUBJECT: Changes to Noise Ordinance and Enforcement

The purpose of this report is to clarify the recent changes to the Noise Ordinance under section 8.28 of the Municipal Code and to outline enforcement of the ordinance.

DISCUSSION:

Changes: The language in the code was updated to provide clarification on what constitutes “unreasonable noise”; spell out the general prohibitions and specific prohibitions; general exemptions and temporary exemptions; name responsible parties and method of enforcement. The following is a summary of the more notable provisions. Please refer to the full version of the ordinance for additional details (attached).

Under General Prohibitions there are two applications:

1. Any loud, unnecessary, or unusual noise that is excessive, disruptive, and/or annoying; **and**
2. Is continuous or intermittent for a period of at least fifteen (15) minutes (this is enforceable at any hour)

OR

3. Occur after 10:00 p.m. but before 6:00 a.m.; **and**
4. Are plainly audible beyond the property line of the property on which conducted; **and**
5. Disturbs the peace and quiet of a neighborhood or a reasonable person of normal sensibilities or special event (this is enforceable only during the time noted)

A complaining member of the public shall not necessarily be required to appear in court before a person may be found responsible for a violation. An anonymous report is sufficient to take enforcement action under either of these two applications.

Under Specific Prohibitions there are a number of provisions that prohibit sound amplification systems in or on a vehicle or outdoor speaker that by volume or vibration (bass) can be heard or

felt at a distance of fifty feet from the source. Specific Prohibitions are enforceable at any hour as witnessed by the officer.

There are General Exemptions which allow for noise associated with planned activities of schools or community organizations; parades, concerts, festivals and fairs; athletic, musical or cultural activities; construction, repair, remodeling.

There are also Temporary Exemptions that can be granted by the City Manager or designee for special events or situations.

Enforcement: The ordinance became effective on 11/14/2020.

B. Officers or agents of the City responding to a complaint under the provisions of this section may:

1. Inform the violator(s) of the violation and seek to gain voluntary compliance; **or**
2. Issue a civil citation; **or**
3. Issue a criminal citation for a third or subsequent violation occurring within a one-hundred twenty (120) day period.

Upon the first observation/report of a noise complaint, we are providing a one-page summary of the provisions of the ordinance (English one side, Spanish on the other) which contains the link to the full version, along with a verbal warning that a second call/occurrence within a 120-day period will subject them to a citation. The penalty is \$100 for the first violation, \$250 for the second and a third violation becomes criminal with a fine of \$500. Once the 120-day period has expired for a given location, we will start the enforcement process over, starting with a verbal warning and progressing to a citation; unless circumstance warrant otherwise.

RECOMMENDATION / CONCLUSION:

This report is for information only.

ATTACHMENTS:

Noise Ordinance Summary (English/Spanish)
Chapter 8.28 of Municipal Code – Noise

Chapter 8.28 NOISE

8.28.010 Definitions.

M. "Unreasonable noise" means any loud, unnecessary, or unusual noise that is excessive, disruptive and/or; which (1) annoys or disturbs a reasonable person of normal sensitivities; or (2) endangers or injures the safety or health of humans or animals; or (3) endangers or injures personal or real property. (Ord. 616 § 1, 1993; Ord. 20-1121 §1, 2020)

8.28.020 Prohibitions—General. A. The following activities are prohibited if they produce: 1. Any loud, unnecessary, or unusual noise that is excessive, disruptive, and/or annoying; and 2. Are continuous or intermittent for a period of at least fifteen (15) minutes; or 3. Occur after 10:00 p.m. but before 6:00 a.m.; and 4. Are plainly audible beyond the property line of the property on which conducted; and 5. Disturbs the peace and quiet of a neighborhood or a reasonable person of normal sensitivities or special event.

8.28.030 Prohibitions—Specific. A. Use any automobile, motorcycle or other vehicle, engine or motor of whatever size, stationary or moving, instrument, device or thing, in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise. B. Operating any mechanical device operated by gasoline, or otherwise, without having a muffler, in good working order and in constant operation, to prevent excessive or unusual noise and smoke; and no person shall use a muffler cutout, bypass or similar device. C. Operating or permitting the operation of any sound amplification system in or on a vehicle in such a manner or with such volume as to annoy or disturb the peace and quiet of any reasonable person of normal sensitivities or neighborhood in the vicinity. D. Operating or permitting the operation of any sound amplification system in or on a vehicle in such a manner that the sound is plainly audible at a distance of fifty (50) feet, or in such a manner that it causes a person's normal sensitivities to be aware of vibration accompanying the sound at a distance of fifty (50) feet. E. Maintaining or operating an outdoor speaker that is affixed to any structure or placed upon any property where: 1. The speaker is audible for a distance of more than fifty (50) feet from the source; or 2. The speaker is two hundred fifty (250) feet or closer to a location that is zoned or developed for residential use. This restriction shall not apply to intercommunication systems that are utilized from 9:00 a.m. to 6:00 p.m. for the sole purpose of conducting the internal business affairs of the establishment.

8.28.040 General Exemptions: The following activities are exempt from the provisions of 8.28.020 and 8.28.030:

D. Parades, concerts, festivals, fairs and similar activities; E. Athletic, musical or cultural activities or events; and F. Construction, repair, remodeling, demolition, drilling, landscape maintenance, landscaping, lawn or yard work, wood cutting – including crafts and hobbies, or excavation work conducted between 6 a.m. through 10:00 p.m. (Ord. 616 § 4, 1993) G. Devices used in conjunction with places of religious worship. H. Noncommercial public speaking and public assembly activities conducted on public property or public right of way. (Ord. 20-1121 §1, 2020).

8.28.060 Responsible Party: A. The person responsible for an activity that violates this section shall be deemed responsible for the violation.

8.28.070 Enforcement: A. The Police Department and any other City Department as designated by the City Manager is authorized to enforce the provisions of this section. A complaining member of the public shall not necessarily be required to appear in court before a person may be found responsible for a violation of this section. B. Officers or agents of the City responding to a complaint under the provisions of this section may: 1. Inform the violator(s) of the violation and seek to gain voluntary compliance; or 2. Issue a civil citation; or 3. Issue a criminal citation for a third or subsequent violation occurring within a one hundred twenty (120) day period. (Ord. 20- 1121 §1, 2020).

8.20.080 Violation – Penalty A. The penalty for the first violation shall be a mandatory minimum fine of \$100.00. B. The penalty for the second violation shall be a mandatory minimum fine of \$250.00. C. A third or subsequent violation shall constitute a Class 3 misdemeanor to be punishable by a mandatory minimum fine of \$500.00. (Ord. 20-1121 §1, 2020)

Capítulo 8.28 RUIDO

8.28.010 Definiciones.

M. "Ruido irrazonable" significa cualquier ruido fuerte, innecesario o inusual que sea excesivo, disruptivo y/o; que (1) moleste o moleste a una persona razonable de sensibilidades normales; o (2) pone en peligro o lesiona la seguridad o la salud de las personas o los animales; o (3) pone en peligro o lesiona bienes personales o inmuebles. (Ord. 616, n.o 1, 1993; Ord. 20-1121 n.o 1, 2020)

8.28.020 Prohibiciones—General. A. Las siguientes actividades están prohibidas si producen: 1. Cualquier ruido fuerte, innecesario o inusual que sea excesivo, disruptivo y/o molesto; y 2. Son continuos o intermitentes durante un período de al menos quince (15) minutos; o 3. Ocurrir después de las 10:00 p.m. pero antes de las 6:00 a.m.; y 4. Son claramente audibles más allá de la línea de propiedad de la propiedad en la que se llevó a cabo; y 5. Perturba la paz y la tranquilidad de un vecindario o una persona razonable de sensibilidad normal o evento especial.

8.28.030 Prohibiciones—Específicas. A. Utilice cualquier automóvil, motocicleta u otro vehículo, motor o motor de cualquier tamaño, estacionario o en movimiento, instrumento, dispositivo o cosa, de tal manera que cree rejillas, moliendas, ruidos u otro ruido fuertes e innecesarios. B. Funcionamiento de cualquier dispositivo mecánico operado por gasolina, o de otra manera, sin tener un silenciador, en buen estado de funcionamiento y en funcionamiento constante, para evitar ruidos y humo excesivos o inusuales; y ninguna persona deberá utilizar un orificio de corte, bypass o dispositivo similar. C. Operar o permitir el funcionamiento de cualquier sistema de amplificación o en un vehículo de tal manera o con tal volumen que moleste o perturbe la paz y la tranquilidad de cualquier persona razonable de sensibilidades normales o vecindario en los alrededores. D. Operar o permitir el funcionamiento de cualquier sistema de amplificación sonora en o en un vehículo de tal manera que el sonido sea claramente audible a una distancia de cincuenta (50) pies, o de tal manera que haga que las sensibilidades normales de una persona sean conscientes de la vibración que acompaña al sonido a una distancia de cincuenta (50) pies. E. Mantener u operar un altavoz exterior que se fija a cualquier estructura o colocado en cualquier propiedad donde: 1. El alta voz es audible para una distancia de más de cincuenta (50) pies de la fuente; o 2. El altavoz tiene doscientos cincuenta (250) pies o más cerca de un lugar que está zonado o desarrollado para uso residencial. Esta restricción no se aplicará a los sistemas de intercomunicación que se utilicen de 9:00 a.m. a 6:00 p.m. con el único propósito de llevar a cabo los asuntos comerciales internos del establecimiento.

8.28.040 Exenciones generales: Quedan exentas de las disposiciones de 8.28.020 y 8.28.030:

D. Desfiles, conciertos, festivales, ferias y actividades similares; E. Actividades o eventos deportivos, musicales o culturales; y F. Construcción, reparación, remodelación, demolición, perforación, mantenimiento del jardín, trabajo en el jardín, trabajos de césped o patio, corte de madera – incluyendo artesanías y pasatiempos, o trabajos de excavación realizados entre 6 a.m. a 10:00 (Ord. 616, 4, 1993) G. Dispositivos utilizados en conjunción con lugares de culto religioso. H. Actividades no comerciales pública y reunión pública realizadas sobre la propiedad pública o el derecho de vía pública. (Ord. 20-1121, n.o 1, 2020). 8.28.060 Parte Responsable: A. La persona responsable de una actividad que viole esta sección se considerará responsable de la violación. 8.28.070 Aplicación: A. El Departamento de Policía y cualquier otro Departamento de la Ciudad designado por el Gerente de la Ciudad está autorizado para hacer cumplir las disposiciones de esta sección. Un miembro reclamante del público no estará necesariamente obligado a comparecer ante el tribunal ante una persona que pueda ser encontrada responsable de una violación de esta sección. B. Los oficiales o agentes de la Ciudad que respondan a una queja bajo las disposiciones de esta sección pueden: 1. Informar al infractor de la violación y tratar de obtener el cumplimiento voluntario; o 2. Emitir una citación civil; o 3. Emitir una citación penal por una tercera o posterior violación que ocurra dentro de un período de ciento veinte (120) días. (Ord. 20- 1121, n.o 1, 2020).

8.20.080 Violación – Penal A. La sanción por la primera violación será una multa mínima obligatoria de \$100.00. B. La sanción por la segunda violación será una multa mínima obligatoria de \$250.00. C. Una tercera o posterior violación constituirá un delito menor de Clase 3 que será castigado con una multa mínima obligatoria de \$500.00. (Ord. 20-1121 n.o 1, 2020) <https://www.douglasaz.gov/DocumentCenter/View/3440/DMC-Title-8-Final-2020>

Chapter 8.28

NOISE

Sections:

8.28.010	Definitions.
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8.28.030	Prohibitions—Specific.
8.28.040	General Exemptions.
8.28.050	Temporary Exemptions.
8.28.060	Responsible Party
8.28.070	Enforcement
8.28.080	Violation - Penalty
8.28.090	Interpretation— Severability.

8.28.010 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as set forth herein:

- A. “Commercial area” means any area within a district zoned office, business, industry or special use.
- B. “Construction” means any site preparation, assembly, erection, substantial repair, alteration, or similar action, for or on public or private property, rights-of-way, structures, utilities or other property.
- C. “Demolition” means any dismantling or intentional destruction or removal of structures, utilities, public or private right-of-way surfaces or similar property.
- D. “Emergency” means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss which demands immediate action.
- E. “Emergency work” means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

F. “Motor vehicle” has the same meaning as provided by A.R.S. Section 28-101.

G. “Noise sensitive zones” means areas immediately surrounding schools, institutions of learning, libraries, places of religious worship, hospitals, nursing homes and courts which conspicuously display signs indicating that those areas are so designated.

H. “Person” means any individual, association, partnership or corporation.

I. “Powered model vehicle” means any self-propelled airborne, waterborne, or landborne plane, vessel or vehicle which is not designed to carry persons, including, but not limited to, any model airplane, boat, car or rocket.

J. “Public right-of-way” means any street, avenue, boulevard, highway, sidewalk or alley.

K. “Real property boundary” means the property line along the ground surface and its vertical extension, which separates the real property owned by one person or public entity from that owned by another person or public entity.

L. “Residential” or “Residential area” means any area within a district zoned as single-family or multifamily or property upon which a hotel, motel, boarding house or other building which contain sleeping facilities is located.

M. “Unreasonable noise” means any loud, unnecessary, or unusual noise that is excessive, disruptive and/or; which (1) annoys or disturbs a reasonable person of normal sensitivities; or (2) endangers or injures the safety or health of humans or animals; or (3) endangers or injures personal or real property. (Ord. 616 § 1, 1993; Ord. 20-1121 §1, 2020)

8.28.020 Prohibitions—General.

- A. The following activities are prohibited if they produce:
 - 1. Any loud, unnecessary, or unusual noise that is excessive, disruptive, and/or annoying; and
 - 2. Are continuous or intermittent for a period of at least fifteen (15) minutes; or
 - 3. Occur after 10:00 p.m. but before 6:00 a.m.; and
 - 4. Are plainly audible beyond the property line of the property on which conducted; and
 - 5. Disturbs the peace and quiet of a neighborhood or a reasonable person of normal sensibilities or special event.
- B. Radios, Televisions, Musical Instruments and similar devices. Operating, using, playing or permitting the operation, use or playing of any radio, television, phonograph, tape or CD player, musical instrument, sound amplifier, or similar device which produces, reproduces or amplifies sound;
- C. Loading or Unloading. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans, or similar objects in such a manner to cause an unreasonable noise across a residential real property boundary or within a noise sensitive zone.
- D. Owning, possessing, harboring, or permitting any animal or bird which frequently or for continuous duration howls, barks, meows, squawks or makes other sounds (See Nuisance Animal section 6.04.280).
- E. Allowing or causing any malicious or willful shouting, yelling, screaming or any other form of raucous vocalization by a person or group of people.
- F. Vehicle or Motorboat Repairs and Testing. Repairing, rebuilding, modifying or testing any motor vehicles, motorcycle or motorboat in such a manner as to cause an unreasonable noise across a residential property boundary or within a noise sensitive zone.
- G. Explosives, Firearms and Similar Devices. The use or firing of explosives, firearms or similar devices which create an impulsive sound so as to cause an unreasonable noise across a real property boundary or on a public right-of-way or other public property.
- H. Emergency Signaling Devices.
 - 1. The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle or similar stationary emergency signaling device, except for emergency purposes or for testing. In no event shall such testing occur between the hours of ten p.m. and six a.m. the following day; or
 - 2. Sounding or permitting the sounding of any exterior burglar alarm or any motor vehicle alarm unless such alarm is terminated within six minutes of activation.
- I. Tampering. The following acts or causing thereof are unlawful:
 - 1. The removal or rendering inoperative by any person other than for purposes of maintenance, repair or replacement of any noise control device; or
 - 2. The use of a product which has had a noise control device removed or rendered inoperative, with knowledge that such action has occurred. (Ord. 20-1121 §1, 2020).

8.28.030 Prohibitions—Specific.

- A. Use any automobile, motorcycle or other vehicle, engine or motor of whatever size, stationary or moving, instrument, device or thing, in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise.
- B. Operating any mechanical device operated by gasoline, or otherwise, without having a muffler, in good working order and in constant operation, to prevent excessive or unusual noise and smoke; and no person shall use a muffler cutout, bypass or similar device.
- C. Operating or permitting the operation of any sound amplification system in or on a vehicle in such a manner or with such volume as to annoy or disturb the peace and quiet of any reasonable person of normal sensitivities or neighborhood in the vicinity.
- D. Operating or permitting the operation of any sound amplification system in or on a vehicle in such a manner that the sound is plainly audible at a distance of fifty (50) feet, or in such a manner that it causes a person's normal sensitivities to be aware of vibration accompanying the sound at a distance of fifty (50) feet.
- E. Maintaining or operating an outdoor speaker that is affixed to any structure or placed upon any property where:
 - 1. The speaker is audible for a distance of more than fifty (50) feet from the source; or
 - 2. The speaker is two hundred fifty (250) feet or closer to a location that is zoned or developed for residential use. This restriction shall not apply to intercommunication systems that are utilized from 9:00 a.m. to 6:00 p.m. for the sole purpose of conducting the internal business affairs of the establishment.

- 3. This provision does not prohibit the use of an outdoor speaker where an exemption has been granted by the City Manager or designee.

F. Unruly Gathering:

- 1. A gathering of two (2) or more persons on any private or public property, including the property used to conduct business, in a manner which disturbs the peace and quiet of a neighborhood or a reasonable person of normal sensitivities and/or creates noise prohibited under 8.28.020 or 8.28.030.

- 2. A peace officer may abate an unruly gathering by reasonable means including, but not limited to, dispersal of the persons in attendance; and/or civil citation; and/or criminal citation. (Ord. 20-1121 §1, 2020).

8.28.040 General Exemptions

The following activities are exempt from the provisions of 8.28.020 and 8.28.030:

A. Officers, employees, departments, agencies and instrumentalities of the United States, the state of Arizona and any political subdivision of this state at such time as the aforesaid are engaged in their official duties or functions;

B. The emission of sound for the purpose of alerting persons to the existence of an emergency or for the performance of emergency work; and

C. Nonamplified crowd noises resulting from the planned activities of schools or community organizations. (Ord. 616 § 5, 1993)

D. Parades, concerts, festivals, fairs and similar activities;

E. Athletic, musical or cultural activities or events; and

F. Construction, repair, remodeling, demolition, drilling, landscape maintenance, landscaping, lawn or yard work, wood cutting –

including crafts and hobbies, or excavation work conducted between 6 a.m. through 10:00 p.m. (Ord. 616 § 4, 1993)

G. Devices used in conjunction with places of religious worship.

H. Noncommercial public speaking and public assembly activities conducted on public property or public right of way. (Ord. 20-1121 §1, 2020).

2. The proximity of any residence or noise sensitive zone;

3. The level of the sound to be generated by the event or activity;

4. Effect the type of sound may have on the location to include whether the sound will be steady, intermittent, impulsive or repetitive;

5. Time the event or activity will take place. (Ord. 20-1121 §1, 2020)

8.28.050 Temporary Exemptions

A. The City Manager or designee is authorized to grant a temporary exemption from the requirements established by this article if such temporary exemption would be in the public interest and there is no feasible and prudent alternative to the activity, or the method of conducting the activity, for which the temporary exemption is sought.

B. A temporary exemption must be in writing and signed by the City Manager or designee and must set forth the name of the party granted the exemption, the location of the property for which it is authorized, and the dates and times for which it is effective.

C. A temporary exemption may be granted only for the period of time that is reasonably necessary to conduct the activity, which in no case may exceed thirty (30) days, unless otherwise specified.

D. The following factors shall be considered in determining whether to grant a temporary exemption:

1. The balancing of the hardship to the applicant, the community and other persons in not granting the variance against the adverse impact on the health, safety and welfare of persons adversely affected and any other adverse effects of the granting of the variance;

8.28.060 Responsible Party

A. The person responsible for an activity that violates this section shall be deemed responsible for the violation.

B. If the person responsible for an activity that violates this section cannot be determined, the owner, property manager or agent of the owner, sponsor of the event, lessee or occupant of the property on which the activity is located may be deemed responsible for the violation.

C. Any person in attendance who engaged in any conduct causing the disturbance may also be deemed responsible for the violation.

D. After three (3) violations on the same property within one-hundred twenty (120) days, in addition to the above, the owner of the property may also be deemed responsible for the violation. (Ord. 20-1121 §1, 2020).

8.28.070 Enforcement

A. The Police Department and any other City Department as designated by the City Manager is authorized to enforce the provisions of this section. A complaining member of the public shall not necessarily be required to appear in court before a person may be found responsible for a violation of this section.

B. Officers or agents of the City responding to a complaint under the provisions of this section may:

1. Inform the violator(s) of the violation and seek to gain voluntary compliance; or
2. Issue a civil citation; or
3. Issue a criminal citation for a third or subsequent violation occurring within a one-hundred twenty (120) day period. (Ord. 20-1121 §1, 2020).

8.20.080 Violation – Penalty

- A. The penalty for the first violation shall be a mandatory minimum fine of \$100.00.
- B. The penalty for the second violation shall be a mandatory minimum fine of \$250.00.
- C. A third or subsequent violation shall constitute a Class 3 misdemeanor to be punishable by a mandatory minimum fine of \$500.00. (Ord. 20-1121 §1, 2020)

8.28.090 Interpretation—Severability.

- A. No provision of this chapter shall be construed to impair any common law or statutory cause of action, or legal or equitable remedy therefrom, of any person for injury or damage arising from any violation of this chapter or from other law.
- B. If any provision or clause of this chapter or the application thereof to any person or circumstance is held to be invalid or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect other provisions, clauses or applications thereof which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this chapter are declared to be severable. (Ord. 616 § 7, 1993, Ord. 20-1121 §1, 2020).