

ORDINANCE NO. 2259

AN ORDINANCE AMENDING THE EXCESSIVE NOISE NUISANCE BY ADDING CERTAIN LANGUAGE, AMENDING SECTIONS 92.25, 92.26, 92.27, 92.28, 92.29 AND 92.30 AND REPEALING SECTION 92.31.

The City of Hermiston ordains as follows:

(New language is in **bold** and language to be deleted in [*brackets and italics.*])

Section 1. The following language setting out the purpose of the Excessive Noise nuisance and the findings of the council is to be inserted between the title “Excessive Noise” and Section 92.25 of Chapter 92 of the Hermiston Code of Ordinances, as follows:

Excessive Noise

Purpose. This chapter is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the residents and visitors of Hermiston 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 individuals of ordinary sensitivity.

Findings. The City Council of Hermiston finds that:

A. Loud or raucous noise degrades the environment of the City to a degree that is harmful to the health, welfare and safety of its residents and visitors; interferes with the comfortable enjoyment of life and property; interferes with the well-being, tranquility and privacy of the home; and may cause or aggravate health problems.

B. The effective control of loud or raucous noise is essential to the health and welfare of the City’s residents and visitors, and to the conduct of the normal pursuits of life, including recreation, work and communication.

C. The use of sound amplification devices may create 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 well-being of residents and visitors of the City.

D. Certain short-term easing of noise reductions 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 under the Oregon and Federal constitutions. This chapter enacts narrowly drawn, content-neutral regulations that are to be interpreted as such so as not to infringe upon constitutionally protected rights.

Section 1. Section 92.25 of Chapter 92 of the Code of Hermiston is amended to read:

92.25 DEFINITIONS

For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

“Alarm system” has the meaning as provided in HMC 95.03.

[A-SCALE (dBA). The sound level in decibels measured using the A-weighted network as specified in the American National Standard Specification for Sound Level Meters (ANSI S1.4-1971).]

“Animal or Animals” has the meaning as provided in HMC 90.02.”

“City” means City of Hermiston.

“City Manager” means the City Manager of the City or the City Manager’s designee.

“Code Enforcement Official” means the person appointed by the City Manager to enforce the provisions of City Ordinances or by his/her order, specifically designated peace officers.

[DECIBEL (dB). A unit for measuring the volume of a sound.]

“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 to prevent or alleviate physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.

“False alarm” has the meaning as provided in HMC 95.03.

“Highway” means every public way, road, street, thoroughfare, and place, including bridges, viaducts, and other structures in the City, open, used, or intended for use of the general public for vehicles or vehicular traffic as a matter of right.

[NOISE SENSITIVE. Any authorized land use of a church, temple, synagogue, day care center, hospital, rest home, retirement home, group care home, school, dwelling unit (single-family dwelling, duplex, triplex, multi-family dwelling, or mobile home) or other use of the same general type, and rights-of-way appurtenant thereto, whether publicly or privately owned.]

“Noise-sensitive area” includes, but is not limited to, a sleeping facility, or real property normally used as a school, church, hospital, or public library within the service area of the City of Hermiston. Property used in industrial or agricultural activity is not a noise

sensitive area, unless it also meets the above criteria in more than an incidental manner.

“Person” has the meaning as provided in HMC 10.05(B).

[PLAINLY AUDIBLE SOUND. Unambiguously communicated to the listener. PLAINLY AUDIBLE SOUNDS include but are not limited to understandable musical rhythms, understandable spoken words and vocal sounds other than speech which are distinguishable as raised or normal.]

“Plainly audible” means any sound that can be heard by a reasonable individual of ordinary sensitivities using his or her unaided hearing faculties, including, but not limited to understandable spoken words, comprehensible musical rhythms, vocal sounds other than words, mechanical, or electronic noise.

“Premises open to the public” includes any premises open to the general public for the use of motor vehicles, whether the premises are publicly or privately owned and whether or not a fee is charged for the use of the premises.

“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 area of the City that is designated as residential land use in accordance with the terms and maps of the City’s zoning ordinance.

“Sleeping facility” includes, but is not limited to, a residential dwelling, hotel, motel, or residential care facility.

[SOUND LEVEL METER. A sound measuring device, either Type 1 or Type 2, as defined by American National Standard Specification for Sound Level Meters (ANSI S1.4-1971).]

[SOUND PRODUCING DEVICE. Any of the following:

- (1) Loudspeakers, public address systems;*
- (2) Radios, tape recorders and/or tape players, phonographs, television sets, stereo systems, including those installed in a vehicle;*
- (3) Musical instruments, amplified or unamplified;*
- (4) Sirens, bells;*

- (5) *Vehicle engines or exhausts, when the vehicle is not in a public right-of-way, particularly when the engine is operated above idling speed;*
- (6) *Vehicle tires, when caused to squeal by speed or acceleration;*
- (7) *Domestic tools, including electric drills, chainsaws, lawn mowers, electric saws, hammers and similar tools, but only between the hours of 6:00 p.m. and 7:00 a.m. of the following day;*
- (8) *Vehicles inclusive of automobiles, motorcycles, motorbikes, trucks, buses, snowmobiles, boats or any similar piece of equipment equipped with a propelling device;*
- (9) *Persons or animals causing sound to emanate.]*

“Utility Service” means the normal operation of utilities within the City, whether provided by the City or by another entity, including but not limited to water, wastewater, electricity, natural gas, telecommunications and garbage hauling.

Section 2. Section 92.26 of Chapter 92 of the Code of Hermiston is amended to read:

[92.26 *SOUND MEASUREMENT.*

(A) If measurements are made, they shall be made with a sound level meter. The sound level meter shall be an instrument meeting the requirements of Type 1 or Type 2 meter in accord with ANSI Standard 1.4-1971.

(B) Measurements may be made at or within the boundary of the property on which a noise sensitive location is located which is not the source of the sound or within a noise sensitive building or location which is not the source of the sound.]

92.26 JURISDICTION.

SCOPE. This ordinance applies to all sound originating within the jurisdictional limits of the City.

Section 3. Section 92.27 of Chapter 92 of the Code of Hermiston is amended to read:

[92.27 *PROHIBITIONS.*

It shall be unlawful for any person to produce or permit to be produced, with any sound producing device, sound which:

(A) When measured at or within the boundary of the property on which a noise sensitive unit is located which is not the source of the sound, or, within a noise sensitive unit which is not the source of the sound, exceeds:

- (1) 50 dBA at any time between 6:00 p.m. and 7:00 a.m. of the following day;*

(2) 60 dBA at any time between 7:00 a.m. and 6:00 p.m. of the same day.

(B) Any person knowingly creating, assisting in creating, continuing, or permitting the creation of any of the following noise disturbances shall be deemed in violation of this subchapter, regardless of the decibel level of disturbance:

(1) Use of dynamic braking devices on any motor vehicle, except to avoid imminent danger to persons or property. A dynamic braking device is one used primarily on trucks and buses to convert a motor from an internal combustion engine to an air compressor for the purpose of vehicle braking without the use of wheel brakes.

(2) Repair and testing of motor vehicle or other engine which is plainly audible within a noise sensitive unit between the hours of 11:00 p.m. and 7:00 a.m.

(3) Operation of a motor vehicle, air compressor or similar mechanical device without a muffler or with a muffling device as defined in ORS 815.025.

(4) The sounding of any horn or signal device on any vehicle, except as a necessary warning of danger to property or person.

(5) The use of any gong, bell or siren upon any vehicle other than a police, fire or emergency vehicle.

(6) The operation of any vehicle in a manner to cause the tires to squeal or skid, except to avoid imminent danger to persons or property.

(7) The detonation of a blasting or explosive device, except as allowed when performed under a permit issued by appropriate governmental authorities.

(8) The playing, using or operation of any radio, musical instrument, phonograph, television set, tape recorder, loud speaker or sound amplifier, either stationary or mobile, or other machine or device for the producing or reproducing of sound in such a manner as to project sound upon public streets, or other public property, or upon private property owned by someone other than the owner or operator of the sound producing device in such a manner as to disturb any other person.]

92.27 GENERAL PROHIBITION.

(A) No person shall make, continue, or cause to be made or continued:

(1) Any unreasonably loud or raucous noise within the jurisdictional limits of the City; or

(2) Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable individuals of ordinary sensitivity, within the jurisdictional limits of the City; or

(3) Within the jurisdictional limits of the City, any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any individuals within the residential area from which said noises are heard; or as to unreasonably interfere with, or detrimentally or adversely affect the peace and comfort of residents or their guests, or operators or customers in places of business.

(B) Factors for determining whether a sound is unreasonably loud or raucous noise include, but are not limited to, the following:

- (1) The proximity of the sound to a noise sensitive area;**
- (2) The land use, nature, and zoning of the area from which the sound emanates and the area where it is heard;**
- (3) The time of day or night the sound occurs;**
- (4) The duration of the sound;**
- (5) Whether the sound is recurrent, intermittent, or constant; and**
- (6) Whether the sound is created by a sound-amplification device.**

Section 4. Section 92.28 of Chapter 92 of the Code of Hermiston is amended to read:

[92.28 EXCEPTIONS.

The following exceptions from this subchapter are permitted when the following conditions are met:

- (A) Emergency equipment not operating on a regular or scheduled basis, whether or not the work is performed by a public or private agency.*
- (B) Sounds caused by sources regulated as to sound production by federal law, including sounds caused by railroad or aircraft operations.*
- (C) Sounds caused by the use of emergency warning devices and alarm systems.*
- (D) Sounds caused by organized athletic activities conducted out of doors on property designated areas used for such purposes, including stadiums, parks, schools, churches and athletic fields, provided, however, that the exception shall not impair the power of any duly authorized law enforcement officer or designated municipal employee to require the curtailment of any sound producing device at the location if complaints are received from surrounding properties.]*

92.28 NOISES PROHIBITED. The following acts are declared to be per se violations of

this chapter. It includes, but is not limited to:

(A) Unreasonable Noises: The unreasonable making of, or unreasonably permitting to be made, any unreasonably loud, boisterous, or unusual noise, disturbance, commotion, or vibration in any residential dwelling, place of business or upon any highway, 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 noise sensitive areas or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision.

B. Sound Amplification Devices. Except as allowed by applicable city, state, or federal laws, a City special permit, or as a City hosted event, the unreasonably loud and raucous use or operation of a sound-amplifying device in the following areas:

1. Within or adjacent to a residential or noise-sensitive area.
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 or raucous.

C. Yelling, Shouting, and Similar Activities. Yelling, shouting, hooting, whistling, or singing at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable individuals of ordinary sensitivities. This subsection 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.

D. Construction and Similar Activities.

1. The construction, excavation, demolition, alteration, or repair of any building, street, highway or the alike, other than between the hours of 7:00 a.m. and 7:00 p.m.; except in cases of urgent necessity in the interest of the public welfare and safety, emergency construction or repair noises are exempt from this provision.
2. In non-emergency situations, the City Manager may issue a permit, upon application, if the City Manager determines that the public welfare and safety, as affected by loud and raucous noise caused by construction, excavation, demolition, alteration or repair of buildings, 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 nonemergency cases for a period of not more than thirty days. The permit may be renewed once, for a period of thirty days or less.

E. Noise-Sensitive Areas. The creation of any unreasonably loud and raucous noise adjacent to any noise-sensitive area while it is in use, and which unreasonably interferes with the workings of the noise-sensitive area or which disturbs the individuals within the noise-sensitive area.

F. Blowers and Similar Devices. In a residential area or noise-sensitive area, between the hours of 9:00 p.m. and 7:00 a.m., the operation of any noise-creating blower, power fan, or any internal combustion engine; provided, that the noise from the blower, power fan or internal combustion engine can be heard across the property line from which it emanates.

G. Commercial Establishments Adjacent to Residential Property. Unreasonably loud or raucous noise from the premises of any commercial establishment, including any outdoor area which is a 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 the nearest property line of a noise-sensitive area within the service area of the City of Hermiston.

H. Vehicle Horns, Signaling Devices and Similar Devices. The sounding of any horn, signaling device, or other similar device, on any motor vehicle on a highway or premises open to the public 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 sounding of any horn, signaling device, or other similar device, as a danger warning, is exempt from this prohibition.

I. Loading or Unloading. 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. Non-emergency Signaling Devices. Sounding or permitting the sounding of any amplified signal from any bell, chime, siren, whistle, or similar device, intended primarily for non-emergency purposes, from any place. The reasonable sounding of such devices by houses of religious worship, seasonal contribution solicitors, or by the City for traffic control purposes are exempt from the operation of this subsection.

K. Emergency Signaling Devices. The intentional sounding or permitting the sounding of any emergency signaling device, including fire alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided in subsections (K)(1) and (2) of this section.

1. The testing of an emergency signaling device occurring 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 any calendar month.

2. Sounding or permitting the sounding of any alarm system, shall terminate within 15 minutes of activation unless an emergency exists. If a false alarm occurs more than twice in a calendar month, then the owner or person responsible for the alarm system shall be in violation of this chapter.

L. Radios, Televisions, Boomboxes 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 individual other than the

player or operator of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of residents in a residential area or noise-sensitive area.

M. 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.

Section 5. Section 92.29 of Chapter 92 of the Code of Hermiston is amended to read:

[92.29 PERMITS REQUIRED FOR CERTAIN EVENTS.

The use of amplified voice and music at levels which would otherwise exceed those permissible under this subchapter may be allowed upon application to the City Council of the city. The applicant shall identify the date, location and time of the event for which the permit is sought. The permit may be issued, denied or conditioned at the sole discretion of the Council.]

92.29 EXEMPTIONS.

Sounds caused by the following are exempt from the prohibitions of Section 92.28 and are in addition to the exemptions specifically set forth in that section.

A. Motor vehicles on highways or premises open to the public; provided, that the prohibition in HMC 92.28(H) and 92.28(K)(2) 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 alarm systems used to signal an emergency, provided the prohibition under 92.28(K) continues to apply.

D. The emission of sound for the purpose of alerting individuals 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 the behalf of the City, State, or 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. 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. Outdoor gatherings, public dances, shows, and sporting events, and other similar outdoor events, provided that a special permit has been obtained beforehand from the City's proper permitting authority; or the event is being sponsored by the City; or the

event has been sanctioned by the City on City owned property.

H. Noise emanating from the combustion, detonation, or concussion caused by using fireworks or other similar devices, from July 1st until July 5th of each year.

Section 6. Section 92.30 of Chapter 92 of the Code of Hermiston is amended to read:

[92.30 ADDITIONAL ORDINANCES AND LAWS.

The provisions of this subchapter shall be cumulative and nonexclusive and shall not affect any other claim, cause of action or remedy; nor, except for Section 23 of Ordinance 1260 which is hereby repealed, amend or modify any law, ordinance or regulation relating to noise or sound, but shall be deemed additional to existing legislation and common law on the subject.]

92.30 ENFORCEMENT. The City Manager, Police Chief, Code Enforcement Official, or any designee(s) thereof will have primary responsibility for the enforcement of the noise regulations contained in this ordinance. Nothing in this ordinance shall prevent the City Manager, Police Chief or Code Enforcement Official from obtaining voluntary compliance by way of warning, notice, or education.

Section 7. Section 92.31 of Chapter 92 of the Code of Hermiston is repealed:

[92.31 ADMINISTRATION AND ENFORCEMENT.

The direction of the administration of this subchapter shall be by the City Manager, or by his order, specifically designated employees and peace officers. Enforcement of this subchapter may include:

(A) Upon citation of a person for a violation of this subchapter, the person issuing the citation may seize the sound producing device which was the source of the sound as evidence, only if the violation is determined by the use of a sound level meter. The sound producing device, if seized, will be impounded subject to disposition of the issued citation and the determination by the court whether the sound producing device shall be returned to the cited person or deemed contraband, subject to confiscation and disposition as provided in this subchapter. It is the intent of this subchapter to avoid the seizures except where the person being cited has received two previous citations within the previous six months for the use of the same or similar sound producing device. The previous citation may, but need not, occur on the same date as the citation which prompts the seizure.

(B) Standard city forms may be used to cite violations of this subchapter.]

Section 8. Effective Date. This ordinance is effect on the 30th day after its adoption.

PASSED and ADOPTED by the Common Council the 23rd day of July 2018.
SIGNED by the Mayor the 23rd day of July 2018.

MAYOR

CITY RECORDER