

ORDINANCE NO. 4547

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON RELATING TO ELLENSBURG MUNICIPAL CODE CHAPTER 5.60 ENTITLED "NOISE" AND AMENDING SECTIONS 5.60.060, 5.60.070, 5.60.080 AND 5.60.120; AND ADDING A NEW SECTION 5.60.010 ENTITLED "DECLARATION OF POLICY" THERETO.

WHEREAS, the City Council desires to minimize the exposure of its citizens to the physiological and psychological dangers of excessive noise and to protect, promote and preserve the public health, safety and welfare, and

WHEREAS, the City Council also seeks to control the level of noise in a manner which promotes the use, value, and enjoyment of property, sleep and repose; commerce; and the quality of the environment, and

WHEREAS, the problem of noise in the city has been observed by the city council and the city staff and is documented by the complaints received and logged in the police department. On the basis of these observations and complaints, the city council finds that special conditions exist within the city which make necessary any and all differences between this chapter and the regulations adopted by the Washington State Department of Ecology.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. A new section 5.60.010 entitled "Declaration of Policy" is hereby added to the Ellensburg Municipal Code to read as follows:

5.60.010 Declaration of policy.

It is hereby declared to be the policy of the city to minimize the exposure of citizens to the physiological and psychological dangers of excessive noise and to protect, promote and preserve the public health, safety and welfare. It is the express intent of the city to control the level of noise in a manner which promotes the use, value and enjoyment of property, sleep and repose; commerce; and the quality of the environment.

Section 2. Ellensburg Municipal Code Section 5.60.060, as last amended by Ordinance No. 4345 is hereby amended to read as follows:

5.60.060 Unreasonable noise unlawful.

A. Violation. It is unlawful for any person to cause or make, or for any person to allow to originate from the property in or under his or her possession, ownership or control, any loud or raucous noise which unreasonably disturbs or interferes with the peace, comfort or repose of others. While the ordinance codified in this chapter is in effect 24 hours a day, every day, the level of acceptable noise is lower between the hours of 10:00 p.m. and 7:00 a.m.

B. Definition. "Person," as used in this chapter, means any natural person or persons, firm, corporation, partnership, association, business or any other legal or commercial entity.

C. Factors to Be Considered. In determining whether a noise is unreasonable under subsection (A) of this section, the following factors incident to such noise are to be considered: time of day; proximity to any residential structures, including proximity to dwelling units within the same, or adjacent, multifamily structures or complexes; proximity to any school, church, hospital, nursing or convalescent facility, or human service facility; whether the noise is recurrent, intermittent or constant; the volume and intensity of the noise; whether the noise has been enhanced in volume or range by any type of electronic or mechanical means; whether the noise is ~~related to~~ typical of the routine normal operation of a the type of business or industrial activity involved, giving consideration to the effects upon other allowed uses in the land use zone in which the business is located; whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

D. Rebuttable Presumptions. The following noise is presumed unreasonable under subsection (A) of this section:

1. Noise emanating from a residence that can be heard 100 feet beyond the estimated property line at any time of the day, or 50 feet beyond the estimated property line between the hours of 10:00 p.m. and 7:00 a.m.;

2. Noise emanating from a person, machinery, equipment or vehicle that can be heard 200 feet away at any time of day or 50 feet away between the hours of 10:00 p.m. and 7:00 a.m.; provided, however, that sound from motor vehicle sound systems such as tape players, radios, and compact disc players operated at a volume so as to be audible greater than 50 feet from the vehicle itself shall also be presumed unreasonable at any time.

E. Illustrative Enumeration. The following sounds or combinations of sounds are illustrative of the types of sounds which may, upon application of the factors in subsection (C) of this section and/or the presumptions in subsection (D) of this section, constitute unreasonable noise under subsection (A) of this section: This enumeration of sounds or combinations of sounds shall not be construed as excluding other sounds and noises which offend the public peace, comfort or repose of others.

1. Sounds made by any animal, except that such sounds made in animal shelters, commercial kennels, veterinary hospitals, pet shops or pet kennels licensed under this code shall be exempt from this subsection; provided, that notwithstanding any other provision of this chapter, if the owner or other person having custody of the animal cannot, with reasonable inquiry, be located by the investigating officer or if the animal is a repeated violator of this subsection, the animal may be impounded by an animal control officer, subject to redemption in the manner provided by ordinance.

2. Sounds made by horn or siren, except such sounds that are made to warn of danger or that are specifically permitted or required by law.

3. Sounds made in connection with the starting, operation, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle, or internal combustion engine.

4. Sounds created by use of a musical instrument, or other device capable of producing sound when struck by an object, a whistle, sound amplifier, stereo, radio, compact disc player, television, motor vehicle audio system or other device capable of producing, amplifying, or reproducing sound.

5. Sounds made by the amplified or unamplified human voice, such as yelling, shouting, screaming and hooting.

6. Sounds made in connection with activities such as a band session, social gathering, tavern operation or liquor establishment, or commercial sales lot.

F. Content Not to Be Considered. The content of any speech associated with a sound shall not be considered in determining a violation of this section.

[Ord. 4345, 2002; Ord. 4207, 1999; Ord. 3932 § 2, 1994; Ord. 3748 § 2, 1991; Ord. 3691 § 1, 1990; Ord. 3493 § 2, 1985.]

Section 3. Ellensburg Municipal Code Section 5.60.070, as last amended by Ordinance No. 4345 is hereby amended to read as follows:

5.60.070 Closure of doors and restriction on outdoor activities.

All It is unlawful for any person who owns, operates or manages a commercial establishments that provides live or recorded music or electronic gaming or entertainment devices to patrons for purposes of dance or entertainment shall to fail or neglect to close their external doors, including all doors leading to open air patios and outdoor spaces of the establishment, while such music is being provided between the hours of 10:00 p.m. and 7:00 a.m., and no such music, gaming or entertainment devices shall be allowed or used outside of the interior portions of said establishments during those hours. [Ord. 4345, 2002; Ord. 3932 § 1, 1994.]

Section 4. Ellensburg Municipal Code Section 5.60.080, as last amended by Ordinance No. 4345 is hereby amended to read as follows:

5.60.080 Penalty.

It shall be a civil infraction for any person to violate the provisions of this chapter. Any person who violates any provision of this chapter shall be assessed a penalty and default amount in an amount not to exceed \$250.00, not including statutory assessments; provided, that the penalty and default amount for a second ~~or subsequent~~ violation within any 12-month period shall not exceed \$500.00, and the penalty amount for a third or subsequent violation within any 12-month period shall not exceed \$1,000.00. [Ord. 4345, 2002; Ord. 4207, 1999; Ord. 3748 § 3, 1991; Ord. 3493 § 2, 1985.]

Section 5. Ellensburg Municipal Code Section 5.60.120, as last amended by Ordinance No. 4345 is hereby amended to read as follows:

5.60.120 Exceptions and waivers.

A. Exceptions. The provisions of this chapter shall not apply to:

1. Noise originating between the hours of 7:00 a.m. and 10:00 p.m. from regularly scheduled community events or associated with preparation for such events, such as sporting events, public concerts, parades, or public ceremonies, including regularly scheduled events conducted by or at the Kittitas County fairgrounds;
2. Normal construction activity between the hours of 6:00 a.m. and 10:00 p.m.;
3. Special community events approved by majority vote of the city council;
4. Noise associated with street cleaning, emergency repair to any street, building or structure, fire suppression, law enforcement response or any other emergency activity designed

to preserve life or property, undertaken by the United States, the state of Washington, the city of Ellensburg, or any of their respective officers, employees or contractors;

5. Noise associated with snow removal;

6. Noise created by sources in industrial zones which over the previous three years have consistently operated as a consequence of process necessity or demonstrated routine normal operation;

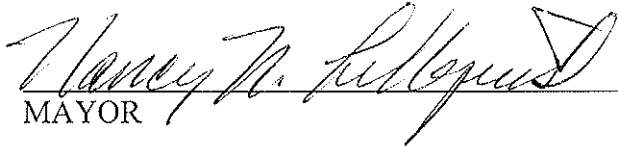
7. Between the hours of 7:00 a.m. and 10:00 p.m., noise created by powered equipment used in temporary or periodic maintenance or repair of residential property, grounds and appurtenances, including but not limited to sounds from lawnmowers, snow removal equipment and powered hand tools.

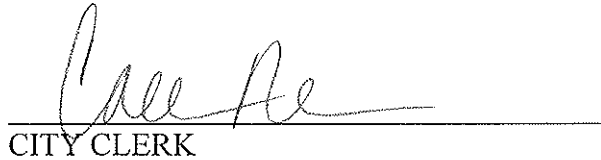
B. Waivers Approved by City Council. The city council may, by majority vote, grant a waiver to an event or activity otherwise subject to the provisions of this chapter. In granting a waiver, the council may prescribe reasonable conditions, including but not limited to limiting the times and location for which the waiver applies. The grant of any such waiver shall be specific to the location of the particular event or activity for which the waiver is granted, unless a broader geographic application of the waiver is identified by council. [Ord. 4345, 2002; Ord. 3965 § 1, 1994; Ord. 3932 § 3, 1994.]

Section 6. Severability. If any portion of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance.

Section 7. Effective Date. This ordinance shall be in full force and effect upon its passage, approval and publication as provided by law.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 20th day of July, 2009.


MAYOR


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

PUBLISH: July 23, 2009

I, Coreen M. Reno, City Clerk of said City, do hereby certify that Ordinance No. 4547 is a true and correct copy of said Ordinance of like number of said City as the same was passed by said Council, and that Ordinance No. 4547 was published as required by law.



COREEN M. RENO, CMC