

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA MUNICIPAL CODE BE AMENDED BY GENERALLY REVISING CHAPTER 17, REPEALING SECTIONS 17-103, 17-105, 17-109, 17-110, 17-111, AMENDING SECTIONS 17-101, 17-102, 17-104, 17-106, 17-107, 17-112 AND RENUMBERING ACCORDINGLY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That the Billings, Montana, City Code be amended by amending certain sections of Chapter 17 - NOISE, as follows:

Chapter 17 - NOISE

Sec. 17-101. - Definitions.

As used in this chapter, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this section:

Ambient noise is the noise which exists at a point of measurement in the absence of the sound emitted by the source being measured, being the total effect of all other sounds coming from near and far.

~~DBA~~ dB(A) means sound levels in decibels measured on an "A" scale of a standard sound level meter having characteristics defined by the American National Standards Institute, Publication S.4-1970.

Decibel. Sound pressure level in decibels is a logarithmic unit used to express the magnitude of sound pressure with respect to a reference sound pressure. It is defined as twenty (20) times the logarithm to the base ten (10) of the ratio of the sound pressure to the reference sound pressure. By international standards, the reference sound pressure is 2×10^{-5} newtons/meter squared. By example, a doubling of sound pressure, at any magnitude, will result in a six (6) decibel increase in sound pressure level; a ~~tenfold~~ tenfold increase will result in a twenty (20) decibel increase in sound pressure level.

Emergency work ~~is work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from exposure to danger or potential danger.~~

is unanticipated work, maintenance, or construction required to restore property to a safe condition following a public calamity, meteorological event, accident, or any other event which interrupts essential services or utilities, endangers persons or property, or adversely affects infrastructure.

~~Health means an optimal state of physical, mental and emotional well being and not merely the absence of disease.~~

Residential area includes:

- Residential-rural,
- Residential-suburban,
- Residential-suburban-trailer,
- Residential-one family,
- Residential-one family, restricted,
- Residential-two family,
- Residential-multiple family,
- Residential-professional.

"Light commercial" includes:

- Commercial-limited.

"Heavy commercial" includes:

- Commercial-highway,
- Commercial-general,
- Commercial-central.

"Industrial" includes:

- Industrial light,
- Industrial heavy.

(Code 1967, § 10.94.010)

Cross reference— Definitions and rules of construction generally, § 1-102.

Sec. 17-102. - Prohibitions generally.

~~It is unlawful for any person to make or cause to be made any excessive or unusually loud noise or any noise measured or unmeasured which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any reasonable person of normal sensitivity within the city.~~

It is unlawful for any person willfully to make or continue to make, or cause to be made or continued, any loud, unnecessary, or unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal

sensitivity residing in the area. The standards which shall be considered in determining whether a violation of the provisions of this section exists shall include the following:

(A) The volume of noise;

(B) The intensity of the noise;

(C) Whether the nature of the noise is usual or unusual;

(D) Whether the noise is produced by a commercial or noncommercial activity;

(E) The volume and intensity of the background noise, if any;

(F) The proximity of the noise to residential sleeping facilities;

(G) The nature and zoning of the area within which the noise emanates;

(H) The density of the inhabitation of the area within which the noise emanates;

(I) The time of the day or night the noise occurs;

(J) The duration of the noise;

(K) Whether the noise is recurrent, intermittent or constant; and

(L) The public benefit derived from the source of the noise.

(Code 1967, § 10.94.020)

~~Sec. 17-103. Prohibited acts.~~

~~It is unlawful to perform any of the following acts within the city:~~

~~(1) Horns, signaling devices. Sounding any horn or signaling device on any truck, automobile, motorcycle or other vehicle on any street or public place of the city except as a warning signal;~~

~~(2) Sound amplifying equipment. Using, operating or permitting the use of any radio receiving set, musical instrument, television, phonograph or other machine or device for the production or reproduction of sound in such a manner as to disturb the quiet, comfort or repose of any normally sensitive and reasonable person. The operation of any such sets, instruments, television, phonographs, machine or device in such a manner as to be in violation of section 17-104 shall be prima facie evidence of a violation of this chapter;~~

~~(3) Loudspeakers, amplifiers for commercial purposes. Installing, using or operating within the city a loudspeaker or sound amplifying equipment at levels in excess of those specified in~~

~~section 17-104 in a fixed or movable position or mounted upon any sound truck for the purpose of giving instructions, directions, talks, addresses, lectures or transmitting music to any persons or assemblages of persons in or upon any street, alley, sidewalk, park, place or public property without first obtaining a permit;~~

~~(4) Yelling, shouting. Yelling, shouting, hooting, whistling or singing on the public streets, alleys or parks at any time so as to annoy or disturb the quiet, comfort or repose of any normally sensitive and reasonable person;~~

~~(5) Exhausts. Discharging into the open air the exhaust of any steam engine, stationary internal combustion engine, motorboat or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom. Modifying any noise abatement device on any motor vehicle or engine in a manner so that the noise emitted by such vehicle or engine is increased above that emitted by such vehicle or engine as originally manufactured is a violation of this section;~~

~~(6) Defect in vehicle or load. Operating any truck, trailer, automobile, motorcycle or vehicle so out of repair or so loaded in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise;~~

~~(7) Loading, unloading, opening containers. Loading, unloading, opening or otherwise handling boxes, crates, containers, garbage containers or other objects in such a manner as to disturb the quiet, comfort or repose of any normally sensitive and reasonable person;~~

~~(8) Construction projects or repair of buildings. Operating equipment or performing any construction or repair work on buildings, structures or projects or operating any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other construction type device in such a manner as to disturb the quiet, comfort or repose of any normally sensitive and reasonable person;~~

~~(9) Fireworks and explosives. The use of fireworks and/or other explosives so as to disturb the quiet, comfort and repose of any normally sensitive and reasonable person;~~

~~(10) Exemption clause. Any of the above acts performed for emergency work for the safety, welfare and public health of the citizens of the city will not be construed to be in violation of this chapter.~~

(Code 1967, § 10.94.030)

Sec. 17-~~104~~.103 - Noise limitations.

(a) The maximum permissible decibel limits on noise emitting from sources ~~not on public right-of-way~~ in residential, commercial and industrial districts are as follows.

(b) Noise will be measured at a distance of twenty-five (25) feet from the source or at the boundary of the lot, whichever is the greater distance. Noise radiating from properties or buildings in excess of the dB(A) established for the districts and times in Table I herewith constitutes prima facie evidence that such noise is a public nuisance. This includes noise from such activities as production, processing, cleaning, servicing, testing and repair of vehicles, materials, goods or products. Noises caused by home or building repair, construction, or grounds maintenance are

excluded as provided in section 17-~~106~~ 104.

Table I—Limitations

Districts	8 a.m. – 8 p.m. <u>7 a.m. – 8 p.m.</u>	8 p.m. – 8 a.m. <u>8 p.m. – 7 a.m.</u>
Residential	55 <u>65</u> dB(A)	50 <u>55</u> dB(A)
Light commercial	60 <u>80</u> dB(A)	55 <u>60</u> dB(A)
Heavy commercial	70 <u>85</u> dB(A)	65 <u>70</u> dB(A)
Industrial	80 <u>90</u> dB(A)	75 <u>80</u> dB(A)

(1) ~~(c)~~ At boundaries between zones, the lower of the dB(A) level shall be applicable.

~~(2) To be in violation, the source of noise must be identifiable and the levels without regard to the ambient must exceed the above limitations.~~

~~(3) Periodic or impulsive noises shall be in violation when such noises are at a noise level of five dB(A) less than those listed in this section.~~

~~(4) Construction projects shall be subject to the maximum permissible noise levels specified for industrial districts for the period within which construction is to be completed pursuant to any applicable construction permit issued by the city, or if no time limitation is imposed, then for a reasonable period of time for completion of the project.~~

~~(5) All railroad rights-of-way shall be considered as industrial districts for the purpose of this chapter, and the operation of trains shall be subject to the maximum noise levels specified for such district.~~

(Code 1967, § 10.94.040)

~~Sec. 17-105. Motorized vehicles.~~

~~(a) It is unlawful to operate a motorized vehicle within the city which emits noise in excess of the limits specified in Table II below.~~

~~(b) Noise from a noise source within a public right-of-way, other than a sound amplification system in a motor vehicle, shall be measured at a distance of at least twenty five (25) feet from the center of the nearest traffic lane on a sound level meter of standard design and operated on the "A" weight scale.~~

~~Table II—Maximum Permissible Noise Levels for Motor Vehicles~~

~~(1) Trucks and buses:~~

~~Over 10,000 pounds~~

~~82 dB(A) measured at 50 feet~~

~~88 dB(A) measured at 25 feet~~

~~Under 10,000 pounds~~

~~74 dB(A) measured at 50 feet~~

~~80 dB(A) measured at 25 feet~~

~~(2) — Passenger cars:~~

~~74 dB(A) measured at 50 feet~~

~~80 dB(A) measured at 25 feet~~

~~(3) — Motorcycles, snowmobiles, minibikes and other self propelled vehicles:~~

~~74 dB(A) measured at 50 feet~~

~~80 dB(A) measured at 25 feet.~~

~~(Code 1967, § 10.94.050; Ord. No. 93-4940, § 5, 10-18-93)~~

Cross reference— Operation of loud sound amplification systems in motor vehicles, § 24-351 et seq.

Sec. 17-~~106~~. 104. - Exemptions.

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

- (1) Noise ~~of~~ from safety signals and warning devices;
- (2) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency;
- (3) Noise resulting from emergency work ~~or noise for which a special permit has been granted, as hereafter provided for;~~
- (4) Noise resulting from the operating of motorized lawnmowers fitted with equipment-type mufflers between the hours of ~~7~~8:00 a.m. and 8:00 p.m.;
- (5) Noise caused by home or building repair, construction, or grounds maintenance between the hours of ~~7~~8:00 a.m. and 8:00 p.m.;
- (6) ~~Athletic~~ Permitted events held in stadiums or parks ~~for which a waiver has been granted;~~
- (7) Noise from public parks, schools, and recreational facilities between the hours of 7:00 a.m. and 8:00 p.m.;
- (8) Special events for which a waiver has been granted;
- (9) Noise from construction or maintenance activities performed by the City of Billings, or at the direction of the City of Billings, including but not limited to solid waste retrieval, street

sweeping, road maintenance, and snow removal;

(10) Noise from construction or maintenance activities performed in the Public Right Of Way for which a waiver has been granted;

(11) Noise from construction or maintenance activities for which a waiver has been granted.

(12) Other activities for which a waiver is granted pursuant to Sec. 17-106.

(Code 1967, § 10.94.060)

Sec. 17-~~107~~105. - Measurement of noise.

For the purpose of determining and classifying any noise as excessive or unusually loud as prohibited by this chapter, the following test measurements and requirements shall be applied. ~~may be applied, but a violation of section 17-103 may occur without the following measurements:~~

(1) The noise shall be measured on a sound level meter meeting current American National Standards Institute standards, operated on the "A" weighted scale; or other noise measuring instrument proven sufficiently reliable by commonly accepted scientific standards and admissible in a Court of Law.

(2) ~~In all noise level measurements, the ambient noise shall be at least ten (10) dB(A) below the specific noise source being measured; or~~ No noise source shall constitute a violation of this chapter unless the noise source is at least ten (10) dB(A) above the ambient noise at the time of measurement.

(3) In all sound level measurements, consideration shall be given to the effect of the ambient noise level created by the encompassing noise of the environment from all sources at the time of the sound level measurement.

(Code 1967, § 10.94.070)

Sec. 17-~~108~~106. - Permit for relief. Waiver

~~Applications for a permit for relief from the noise level designated in this chapter on the basis of undue hardship may be made to the city. Any permit granted by the city shall contain all conditions upon which the permit has been granted and shall specify a reasonable time that the permit shall be effective. The city may grant the permit applied for if it finds:~~

~~(1) That additional time is necessary for the applicant to alter or modify his or her activity or operation to comply with this chapter;~~

~~(2) The activity, operation or noise source will be of temporary duration, and cannot be performed in the manner that would comply with other subsections of this section;~~

~~(3) That no other reasonable alternative is available to the applicant;~~

~~(4) The city may prescribe any conditions or requirements it deems necessary to minimize adverse effects upon the community or surrounding neighborhood.~~

(1) Any person may apply to the City Administrator or designee for a waiver from the provisions of this chapter. Such application shall be submitted to the office of City Administrator along with a non-refundable application fee. The City Administrator shall designate waiver application and review procedures and application fees by Administrative Order. The City Administrator may designate representatives from Police, Parks, Building, and Engineering to review and grant waivers under this section by Administrative Order.

(2) Waiver review procedures established by the City shall include but not be limited to consideration of the following criteria:

(a) Whether the noise would endanger the public health, safety, or welfare;

(b) That compliance with the provisions of this chapter from which a waiver is sought would cause serious hardship without producing equal or greater benefit to the public.

(c) The time of day the noise will occur;

(d) The duration of the noise;

(e) The loudness of the noise relative to the maximum permissible sound levels as set forth in this chapter;

(f) Whether the noise is continuous or intermittent;

(g) The distance of proposed activity from residential housing or other noise-sensitive properties;

(h) Whether the proposed activity is within the Central Business District, and whether the proposed activity encourages the promotion of entertainment and nightlife in an area where residential housing is sparse.

(i) Any other factor that is reasonably related to the impact of the noise on the health, safety and welfare of the community, the degree of hardship that may result from the enforcement of the provisions of this article, and the benefit to the public of granting such a waiver.

(3) Any waiver application may be granted or denied by the City of Billings. Any applicant denied a waiver by the City of Billings may appeal the denial to the City Council.

(Code 1967, § 10.94.060)

~~Sec. 17-109. – Violations from moving noise source.~~

~~Violations of this chapter in which the noise source is a truck, bus, passenger car, motorcycle, snowmobile, minibike or other self-propelled vehicle shall be cause for summons and warrant to issue. Machines or devices not customarily used or designed for transportation are excluded herein.~~

(Code 1967, § 10.94.110)

~~Sec. 17-110. -Violations from noise source not on public right-of-way.~~

~~Violation of this chapter in which the noise source is not self propelled or is self propelled but not customarily used or designed for transportation upon public right-of-way shall be cause for issuance of a twenty four (24) hour notice in writing or other reasonable amounts of time not to exceed five (5) days, directed to the owner, occupant, or person in charge of or in control of the machine, device, building or other premises to abate the violation of this chapter. Failure to comply with the order so issued constitutes a violation and summons and warrant shall be issued.~~

(Code 1967, § 10.94.120)

~~Sec. 17-111. -Enforcement personnel.~~

~~The city administrator shall assign duties of enforcement to personnel trained in noise control techniques and procedures and equipped with sound level meters of a standard design.~~

(Code 1967, § 10.94.130)

Sec. ~~17-112~~ 17-107. - Violations; remedies.

(a) ~~Whenever in any section of this chapter or rule or regulation promulgated hereunder, the doing of any act is required, prohibited or declared to be unlawful and no definite fine or penalty is provided for a violation thereof, any~~ Any person who is convicted of a violation of any such section shall, for each offense, ~~be punished~~ be subject to criminal penalties as provided in section 1-110. Each day such violation is committed or permitted to continue constitutes a separate offense.

(b) As an additional remedy, the operation or maintenance of any noise source in violation of any provision of this chapter and which causes discomfort and annoyance to any reasonable person of normal sensitivity or which endangers the comfort, repose, health or peace of residents in the area is a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

(Code 1967, §§ 10.94.090, 10.94.100)

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this _____ day of _____, 2013.

PASSED, ADOPTED and APPROVED on second reading this _____ day of
_____, 2013.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk