

ORDINANCE NO. 2021 – 33

AN ORDINANCE UPDATING NOISE STANDARDS TO BE CONSISTENT WITH STATE REQUIREMENTS FOR SOURCE NOISE AND PROCEDURES FOR PROCESSING EXCEPTIONS, THEREBY AMENDING CHAPTER 10 AND APPENDIX A OF THE CITY CODE.

The City Council of the City of Bloomington, Minnesota ordains:

Section 1. That Chapter 10 of the City Code is hereby amended by deleting those words that are contained in brackets [] with ~~strike through~~ text and adding those words that are underlined, to read as follows:

CHAPTER 10: ENVIRONMENTAL CONTROL

* * *

ARTICLE IV: NOISE CODE

§ 10.29 FINDINGS AND DEFINITIONS.

* * *

(b) The following words and terms when used in this Article IV shall have the following meanings unless the context clearly indicates otherwise.

A-WEIGHTED~~[SOUND LEVEL]~~. A specific weighting of the sound pressure level for the purpose of determining the human response to sound. The specific weighting characteristics and tolerances are those given in the American National Standards Institute (ANSI) S1.4-1983, section 5.1.

AMBIENT~~[NOISE]~~**SOUND LEVEL**. The sound level that exists at a point of measurement in the absence of the sound from the source of interest,~~[, the noise emission of which is being measured, constituting the total effect of all other sounds coming from near and far. The total of all noise in the environment, other than the sound from the source of interest.]~~

* * *

DAYTIME. Those hours from 7:00 a.m. to 10:00 p.m.

dba. A unit of sound level expressed in decibels (dB) and A-weighted.

DECIBEL. A unit of sound pressure level, abbreviated as dB.

IMPULSIVE NOISE. Either a single sound pressure peak (with either a rise time less than 200 milliseconds or total duration less than 200 milliseconds) or multiple sound pressure peaks (with either rise times less than 200 milliseconds or total duration less than 200 milliseconds) spaced at least by 200 millisecond pauses.

* * *

L₁₀~~[10 LEVEL]~~. The ~~[noise]~~sound level, expressed in dBA, which is exceeded ten percent~~[40%]~~ of the time for a one~~[-]~~hour survey, as measured by test procedures ~~[approved by the city official]~~per Minnesota Rules parts 7030.0060 and 7030.0070.

L₅₀. The sound level, expressed in dBA, which is exceeded 50 percent of the time for a one hour survey, as measured by test procedures per Minnesota Rules parts 7030.0060 and 7030.0070.

* * *

NIGHTTIME. Those hours from 10:00 p.m. to 7:00 a.m.

NOISE. Any erratic, intermittent and/or statistically random oscillations which result in disturbing, harmful or unwanted sound.

NOISE LEVEL. See **SOUND LEVEL**.

PERSON. ~~[An individual, firm, partnership, corporation, trustee, association, the state and its agencies and subdivisions, or any body of persons whether incorporated or not. And, with respect to acts prohibited or required herein, **PERSON** shall include employees and licensees.]~~Any human being, any governmental or political subdivision or other public department or agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agency, legal entity, other than a court of law, or any legal representative of any of the foregoing, but does not include the city.

* * *

~~[**SOUND.** A temporal and spatial oscillation in pressure or other physical quantity in a medium with internal forces which causes compressions and rarefactions of that medium and which is propagable at finite speed to distant points.]~~

~~**SOUND LEVEL** [~~**(NOISE LEVEL)**~~]. The A-weighted sound pressure level, expressed in dBA, obtained by use of a sound-level meter having characteristics as specified in the American National Standards Institutes (ANSI) Standard S1.4-1983[1964].~~

~~**SOUND PRESSURE LEVEL (SPL).** Expressed in decibels (dB), is 20 times the logarithm to the base ten of the ratio of the observed sound pressure to a reference pressure of 20 [micropascals]micronewtons per square meter.~~

~~**Type I Noise Exception Permit.** A temporary exception to city code §§ 10.29.02 or 10.29.07 that is reviewed and approved by the Community Development Director or designee.~~

~~**Type II Noise Exception Permit.** An ongoing conditional exception to city code §§ 10.29.02 or 10.29.07 that is reviewed and approved by the City Council.~~

§ 10.29.01 [RESERVED.]ADOPTED BY REFERENCE.

~~For the purpose of prescribing regulations for noise, the city hereby adopts the following as they may be amended or recodified from time to time:~~

- ~~(a) Minnesota Rules part 7030.0010 through 7030.0080 for noise standards and testing procedures;~~
- ~~(b) Minnesota Rules part 7030.1000 through 7030.1060 for motor vehicle noise limits; and~~
- ~~(c) Minnesota Rules part 6100.5700, subpart 5 for snowmobile noise limits.~~

[§ 10.29.015 – MOTOR VEHICLE NOISE LIMITS.

~~Minnesota Rules parts 7030.1000 through 7030.1060 and any subsequent amendments, are hereby adopted by reference and incorporated herein except to the extent specifically inconsistent with this Article IV. The provisions thereof shall be supplemental to the provisions of this Article IV and shall not preempt this city code unless such preemption is required by law.]~~

§ 10.29.02 NOISE SOURCE REQUIREMENTS.

~~[(a)—A noise source (excluding motor vehicles operating on public highways, locomotives and railroad cars, snowmobiles, construction equipment at construction sites, maintenance of utility easements, and snow plowing of public streets and sidewalks by the city or county as detailed in Article IV of this chapter) within the following zoning districts (as defined in this code) shall not exceed the L10 noise levels set forth below.~~

- ~~— (1) Industrial or freeway development zoning districts (which may include, but are not necessarily limited to, foundries, plastics extrusion, heavy equipment repair, metal treating, cement handling, concrete products, excavation processes, junk car disposal or any other manufacturing concern): 70 dBA as measured on the property line of the source.~~
- ~~— (2) Business or commercial recreational (which may include, but are not necessarily limited to, service stations, motels, restaurants, blue printers, lumber yards, drycleaners, experimental laboratories, schools, car washes and open sales lots): 65 dBA as measured on the property line of the source.~~
- ~~— (3) Residential zoning district (which may include, but is not limited to, single-family dwellings, private schools, day care facilities, private garages, permitted home occupations, place(s) of assembly for worship, public stables, marinas, multiple dwellings and retail shops): 60 dBA in the daytime (7:00 a.m. to 10:00 p.m.) and 50 dBA in the nighttime (10:00 p.m. to 7:00 a.m.) as measured on the property line of the source.]~~

~~These standards describe the limiting levels of sound established on the basis of present knowledge for the preservation of public health and welfare. These standards are consistent with speech, sleep, annoyance, and hearing conservation requirements for receivers within areas grouped according to land activities by the Noise Area Classification system established in subpart (b). However, these standards do not, by themselves, identify the limiting levels of impulsive noise needed for the preservation of public health and welfare. Noise standards in subpart (a) apply to all sources.~~

~~(a) *Noise standards.*~~

~~Noise Area Classification~~

~~Daytime~~

~~Nighttime~~

	<u>L₅₀</u>	<u>L₁₀</u>	<u>L₅₀</u>	<u>L₁₀</u>
<u>1</u>	<u>60</u>	<u>65</u>	<u>50</u>	<u>55</u>
<u>2</u>	<u>65</u>	<u>70</u>	<u>65</u>	<u>70</u>
<u>3</u>	<u>75</u>	<u>80</u>	<u>75</u>	<u>80</u>

(b) Noise Area Classification. The Noise Area Classification and the activities in each classification are listed below:

<u>Noise Area Classification</u>	<u>Land Use Activities</u>
<u>1</u>	<u>Household Units (includes farm houses)</u> <u>Hotels, motels, or other overnight lodging</u> <u>Mobile home parks or courts</u> <u>Other residential units</u> <u>Motion picture production</u> <u>Medical and other health services</u> <u>Correctional institutions</u> <u>Educational services</u> <u>Religious activities</u> <u>Cultural activities and nature exhibitions</u> <u>Entertainment assembly</u> <u>Camping and picnicking areas (designated)</u> <u>Resorts and group camps</u> <u>Other cultural, entertainment, and recreational activities.</u>
<u>2</u>	<u>Railroad terminals (passenger and freight)</u> <u>Rapid rail transit and street railway passenger terminals</u> <u>Bus passenger terminals (intercity and local)</u> <u>Other motor vehicle transportation</u> <u>Airport and flying field terminals (passenger and freight)</u> <u>Marine terminals (passenger and freight)</u> <u>Automobile parking</u> <u>Transportation services and arrangements</u> <u>Wholesale trade</u> <u>Retail trade, including restaurants and bars</u> <u>Finance, insurance, and real estate services</u> <u>Personal services</u> <u>Business, legal, or other professional services</u> <u>Repair services</u> <u>Contract construction services</u> <u>Governmental services (except correctional institutions)</u> <u>Miscellaneous services (except religious activities)</u> <u>Public assembly (except entertainment assembly and race tracks)</u> <u>Amusements (except fairgrounds and amusement parks)</u> <u>Recreational activities (except designated camping and picnicking areas)</u>
<u>3</u>	<u>Parks</u> <u>Manufacturing</u> <u>Transportation (except passenger terminals)</u> <u>Highway and street right-of-way</u> <u>Communication</u>

Utilities
Race tracks
Fairgrounds and amusement parks
Agricultural and related activities
Forestry activities and related services (including commercial forest land, timber production, and other related activities)
Fishing activities and related services
Mining activities and related services
Other resource production and extraction
All other activities not otherwise listed.
Undeveloped and unused land area
Noncommercial forest development
Water areas
Vacant floor area
Under construction

(c) Measurement. Measurement of sound must be made at or within the applicable Noise Area Classification at the point of human activity which is nearest to the noise source. All measurements shall be made outdoors.

(d) Exceptions. The Noise Area Classification for a land use may be changed in the following ways if the applicable conditions are met.

(1) The daytime standards for Noise Area Classification 1 shall be applied to Noise Area Classification 1 during the nighttime if the land use activity does not include overnight lodging.

(2) The standards for a building in a Noise Area Classification 2 shall be applied to a building in a Noise Area Classification 1 if the following conditions are met:

- (i) the building is constructed in such a way that the exterior to interior sound level attenuation is at least 30 dBA;
- (ii) the building has year-round climate control; and
- (iii) the building has no areas or accommodations that are intended for outdoor activities.

(3) The standards for a building in a Noise Area Classification 3 shall be applied to a building in a Noise Area Classification 1 if the following conditions are met:

- (i) the building is constructed in such a way that the exterior to interior sound level attenuation is at least 40 dBA;
- (ii) the building has year-round climate control; and
- (iii) the building has no areas or accommodations that are intended for outdoor activities.

(4) The standards for a building in a Noise Area Classification 3 shall be applied to a building in a Noise Area Classification 2 if the following conditions are met:

- (i) the building is constructed in such a way that the exterior to interior sound level attenuation is at least 30 dBA;
- (ii) the building has year-round climate control; and
- (iii) the building has no areas or accommodations that are intended for outdoor activities.

~~[(b) In the event that the property on which an industrial, freeway development, business, commercial-recreational or institutional noise source is located across a street, road or railroad track from, or abuts residentially zoned and residentially use property, the noise source in question shall not exceed an L10 noise level of 60 dBA in the daytime (7:00 a.m. to 10:00 p.m.) and an L10 noise level of 50 dBA in the nighttime (10:00 p.m. to 7:00 a.m.) as measured on the property line of the source.]~~

~~(c) Construction equipment, which may include, but is not necessarily limited to, front loaders, graders, cranes, pumps, saws and generators, being operated at a construction site shall not exceed an L10 noise level of 85 dBA at a distance of 50 feet. See § 10.29.07(c) of this chapter for hours of operation.]~~

§ 10.29.03 [GENERAL TESTING AND MEASUREMENT PROCEDURES.

~~—Noise measurement methodology used must be consistent with Minnesota Rules parts 7030.0060 through 7030.0070, and any subsequent amendments, except for the measurement location of source noise in § 10.29.02, which must be measured on the property line of the source. **RESERVED.**~~

§ 10.29.04 NOISE IMPACT STATEMENTS.

The city official may require noise impact statements in association with, but not limited to, changes in zoning classifications; the planning of a structure; or any operation, process, installation or alteration which may be considered as a potential noise source. Examples include, but are not limited to, the addition or replacement of generators, ventilation equipment or air heating or cooling equipment, commercial laundry appliances, and carwash equipment.

§ 10.29.05 ~~[CENTRAL]AIR [CONDITIONING]HANDLING EQUIPMENT.~~

The city official must approve the location of new installations of central air conditioning plants or other exhausts for equipment which are exterior to a building. If the city official determines that the equipment exceeds the noise source requirements of § 10.29.02, then appropriate noise mitigation must be provided. ~~[it is impossible to position a central air conditioning unit an acceptable distance from adjacent properties, then an alternate method of compliance shall be approved screening or buffering which will meet the requirements of § 10.29.02 of this chapter.]~~

§ 10.29.06 ~~[SNOWMOBILE REQUIREMENTS.~~

~~Snowmobiles must meet the requirements of Minnesota Rules part 6100.5700, subpart 5 and any subsequent amendments]~~**RESERVED.**

§ 10.29.07 OPERATIONAL LIMITS.

(a) *Recreational motor vehicles.* ~~[See Chapter 8, Article III, Division D of this code. Golf course operation and maintenance activities which can meet the requirements outlined in § 10.29.02 are exempt from the operating limits of this subsection (a) or Chapter 8, Article III, Division D of this code.]~~See Chapter 8, Article III, Division of this code.

(b) *Outdoor power implements.* No person shall operate any outdoor power implement, including, but not limited to, power lawn mowers, snow blowers, leaf blowers, weed trimmers, parking lot sweepers, power hedge clippers or such other implements designed primarily for outdoor use, at any time other than between the hours of 7:00 a.m. and 10:00 p.m. on weekdays and 9:00 a.m. and 9:00 p.m. on weekends and holidays. Golf course operation and maintenance activities which can meet the requirements outlined in § 10.29.02 are exempt from the operation limits of this subsection (b).

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§ 10.30 PUBLIC NUISANCE NOISES PROHIBITED.

* * *

(a) It shall be unlawful for any person to make, continue, permit, or cause to be made or continued, any loud, unnecessary or unusual noise or any noise within the city which would be likely to annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of a reasonable person~~[of ordinary sensibilities]~~. The following non-exclusive characteristics and conditions shall be considered in determining whether a noise is loud, disturbing or excessive for the purposes of this section:

* * *

(6) The sound level, if known, in comparison to the ~~[level of]~~ambient ~~[noise]~~sound level.

(b) The following acts constitute a presumptive public nuisance:

* * *

(2) *Radios, phonographs and the like.* The use, operation or permitting the playing, use or operation of any radio receiving set, musical instrument, phonograph or other machine or device for the amplification, production or reproduction of sound at any time in such manner as to be likely to annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of a reasonable person ~~[of ordinary sensibilities]~~who might be in its vicinity or between the hours of 10:00 p.m. and 7:00 a.m. at such a volume so as to be plainly audible at the real property boundary of the building, structure, residence or other area in which the device is located;

* * *

§ 10.30.05 ~~[LIMITATION OF HOURS FOR CERTAIN RESTAURANTS.~~

~~In any residential zone of the city or within 100 feet of any single family residential use within the city, no restaurant, public eating place or other store dispensing food and drink to the public for consumption on the premises, other than industrial or institutional cafeterias, shall remain open for business during the~~

~~five-hour period between 1:00 a.m. and 6:00 a.m. inclusive. Distances shall be measured from the nearest point of the business use on the business lot to the nearest point of the residential lot. However, in the case of restaurants in shopping centers, the distance shall be measured from the residential lot line to the main entrance of the restaurant.]~~**RESERVED.**

§ 10.31 EXCEPTIONS.

(a) *Public safety exceptions.* The operation of authorized emergency vehicles, including without limitation police vehicles, fire vehicles, ambulances and city, county or state snowplowing vehicles, the use of sirens, warning devices, sound amplification devices or other equipment by public safety personnel in emergency situations, and the performance of any emergency work such as utility maintenance, tree removal after weather events, and snow removal necessary to restore public service or eliminate a hazard are exempt from the requirements of this Article IV of city code.

(b) ~~[Private e]Noise Exception[s] Permit.~~ It is recognized that under certain circumstances it would be a hardship for a noise source to comply with the provisions of §§ 10.29.02 or 10.29.07 of this chapter. ~~[due to economic or technological reasons. In cases such as this, application for an exception may be made in writing to the [City Director of Community Development. The application shall contain the following pertinent information: The purpose of the exception permit application process is to ensure that sufficient information is provided by the applicant and that appropriate conditions are attached to enhance compatibility with surrounding uses.~~

- ~~— (A) Dates for exception requested;~~
- ~~— (B) Location of particular noise source and times of operation;~~
- ~~— (C) Equipment involved;~~
- ~~— (D) Necessity for request of exception;~~
- ~~— (E) Steps taken to minimize noise level from source; and~~
- ~~— (F) Names of responsible persons.~~

~~The city shall notify by mail all property owners within 500 feet of the source in question of the requested exception. Applications will be reviewed by the City Director of Community Development and a decision to approve or deny the exception will be made in writing setting forth the factors set forth in § 10.30(a), as well as the evidence of hardship and mailed to the responsible persons within 20 days of receipt.]~~

~~(1) Permit application.~~ The application must be submitted to the Community Development Director and contain the following information:

- (A) Dates for exception requested;
- (B) Location of particular noise source and times of operation;
- (C) Equipment involved;
- (D) Necessity for request of exception;
- (E) Steps taken to minimize noise level from source;
- (F) Names and contact information of responsible persons;
- (G) Names and contact information for the property owner of the location;
- (H) Noise impact statement for a Type II noise exception permit; and
- (I) Application fee listed in City Code Appendix A for a Type II noise exception permit.

~~(2) Review, approval and suspension.~~ Type I noise exception permit applications must be reviewed and acted upon by the Community Development Director or designee. Type II noise exception permit applications must be reviewed and acted upon by the City Council at a public hearing with notice provided at least ten days in advance of the public hearing by first class mail to all property owners and tenants within 500 feet of the proposed noise source. A decision to approve or deny an exception must be based on the factors set forth in 10.30(a).

(A) Appeal of Community Development Director decision. The applicant for a Type I noise exception permit may appeal the decision of the Community Development Director by submitting an appeal request with supporting materials within three business days of the decision. The appellants will be given the opportunity to present their case in front of the City Council.

(B) Conditions of approval. The entity empowered to take action on a noise exception permit has the authority to attach conditions of approval to that application. Any modifications to conditions of approval must be made by the entity that was originally empowered to act upon the noise exception permit.

(C) Suspension or revocation. The City Council may suspend or revoke a Type II noise exception permit upon the failure of the permittee, owner, operator, tenant, or user to comply with the conditions established at the time of approval. A suspension or revocation must be preceded by written notice to the permittee and a hearing. The notice must state the nature of the violation, the time and place of the hearing and mailed to the most recent address listed on the application at least ten days in advance of the hearing.

§ 10.32 [APPEAL OF EXCEPTION PROCESS.]PENALTY.

~~[The decision made by the City Director of Community Development concerning the exception request may be appealed to the City Council within ten days after receiving the City Director of Community Development written decision. The appeal shall be filed in writing with the City Clerk who shall schedule a hearing before the City Council as soon as possible. A written report shall accompany the request for appeal. The report shall contain pertinent information which would adequately justify the request for an exception.]~~

Violation of any provision of this Article IV shall be a misdemeanor. Civil penalties may also be issued pursuant to § 12.15 of the city charter and § 1.19 of this city code. However, nothing in this Article IV shall be construed to limit the city's other available legal remedies for any violation of the law, including without limitation, criminal, civil and injunctive actions.

ARTICLE V: SOUND TRUCKS

§ 10.36 PENALTY.

Violation of any provision of this Article V shall be a misdemeanor. Civil penalties may also be issued pursuant to § 12.15 of the city charter and § 1.19 of this city code. However, nothing in this Article V shall be construed to limit the city's other available legal remedies for any violation of the law, including without limitation, criminal, civil and injunctive actions.

Section 2. That Appendix A of the City Code is hereby amended by deleting those words that are contained in brackets [] with ~~strike through~~ text and adding those words that are underlined, to read as follows:

APPENDIX A - FEE SCHEDULE

This appendix contains the various fees adopted by Ordinance in the listed section of the City Code.

CODE SECTION	CROSS-REF	DESCRIPTION	FEE

CHAPTER 10: ENVIRONMENTAL CONTROL			

<u>§10.31(b)(2)</u>		<u>Type II Noise Exception Permit application fee. City Code Section 21.502.01(e) will be used to calculate additional notice fees for notices in excess of 100 public hearing notices.</u>	<u>\$500.00</u>

Passed and adopted this 11th day of October, 2021.

/s/ Tim Busse
Mayor

ATTEST:

/s/ Matt Brillhart
Secretary to the Council

APPROVED:

/s/ Melissa J. Manderschied
City Attorney