

ORDINANCE NO. 03 (Series 2021)

AN ORDINANCE OF THE CITY OF OURAY, COLORADO, REPEALING NOISE REGULATIONS IN SECTION 10-2-Y OF CHAPTER 10 OF THE OURAY MUNICIPAL CODE AND ADDING NEW SOUND REGULATIONS IN SECTION 10-6 OF CHAPTER 10; AND ESTABLISHING PENALTIES FOR VIOLATIONS.

WHEREAS, sounds levels within the City of Ouray have increased over time with urbanization and complaints concerning noise violations are becoming more frequent.

WHEREAS, Section 10-2-Y of the Ouray Municipal Code regulates noise within City limits but does not set forth maximum decibel levels allowed in a given zone for a certain period of time, making noise regulations difficult to enforce and confusing for the public.

WHEREAS, City Council considered objective noise standards research conducted by staff and Council members on the average noise levels from various sound sources to establish a reasonable baseline for noise levels in the City.

WHEREAS, on February 1, 2021, City Council conducted a work session at 510 Main Street where the ambient noise level of all-encompassing noise associated with the given environment was tested to determine further reasonable maximum decibel levels.

WHEREAS, on March 15, 2021, City Council held a work session to review and revise the draft sound regulations and established maximum noise levels.

WHEREAS, City Council finds these sound regulations are necessary for the health, safety and welfare of the public.

NOW BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OURAY, COLORADO, as follows:

SECTION 1:

Section 10-2-Y of Chapter 10 is repealed and replaced as follows:

Y. Reserved

SECTION 2:

A new Section 10-6 to Chapter 10 is added as follows:

10-6 Sounds Regulations

A. Purpose

1. The making and creating of excessive, unnecessary, or unusually loud noises within the city limits which are prolonged, unusual, or unreasonable in their time, place and use are a detriment to the public health, comfort, convenience, safety, and welfare of the residents of the city and may cause damage to property or business. These regulations are declared a matter of public policy for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare, and peace and quiet of the inhabitants of the city.
2. The maximum decibel levels set forth in the tables below were chosen after considering the average noise levels from various sources in urban areas and testing performed using a sound level meter.

B. Definitions

All terminology used in this chapter shall be consistent with applicable American National Standards Institute publications, or those from successor publications or bodies. For purposes of this chapter, certain words and phrases are defined as follows:

A-weighted sound pressure level means the sound pressure as monitored with a sound level meter using the A-weighted network. The standard notation is dB(A).

Ambient noise level means the sound pressure level of all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources. It is also the sound pressure level exceeded ninety (90) percent of the time based on a sample of at least one (1) minute.

Construction activities means activity incidental to the erection, demolition, assembling, altering, installing, or equipping of buildings, structures, roads, or appurtenances thereof, including land clearing, grading, excavation, and filling.

Continuous noise means steady or fluctuating noise which exists essentially without interruption during the period of observation.

Decibel means a logarithmic unit of measure often used in measuring magnitudes of sound. The symbol is dB.

Device means any mechanism which is intended to, or which does produce audible sound when operated or handled.

Emergency work or emergency vehicle means work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger. An emergency vehicle is a vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.

Intermittent sound source means a source whose sound pressure level equals or is less than the ambient noise level two (2) or more times during a period of observation and is greater than the ambient noise level during the remainder of the period.

Motor vehicle means any vehicle such as, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, motorcycles, mini-bikes, OHVs, go-carts, snowmobiles, motorboats, racing vehicles, and other devices propelled by mechanical power.

Muffler means any apparatus consisting of baffles, chambers, or acoustical absorbing material whose primary purpose is to transmit liquids or gases while causing a reduction in sound emission at one (1) end. To qualify, such an apparatus must cause a reduction of at least ten (10) dB(A) upon insertion into the system for which it is intended.

Person means any human being, firm, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user, owner, or operator.

Property boundary means an imaginary line at the ground surface which separates the real property owned by one person from that owned by another person, and its vertical extension, including any leasehold interest which shall be considered real property owned by a person for purposes of this definition only.

Public right-of-way means any street, avenue, boulevard, highway, alley, premise, or public conveyance which is owned or controlled by a public governmental entity.

Sound level meter means an instrument, including a microphone, amplifier, output meter and weighting networks, for the measurement of sound pressure. The output meter reads sound pressure level when properly calibrated and the instrument is of type 2 or better as specified in the American National Standards Institute Publication Sl. 4-1974, including successor publications.

Stationary sound source means any equipment or facility, fixed or movable, capable of emitting sound beyond the property boundary of the property on which it is located.

Unreasonable noise disturbance means any excessive or unusually loud sound, or any sound which reasonably annoys or disturbs the peace and quiet of any person, family, neighborhood, or assembly with normal sensitivity. The term includes "excessive noise" and "unnecessary noise".

Vehicle means any vehicle such as, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, motorcycles, mini-bikes, OHVs, go-carts, and other devices propelled by mechanical power.

C. Sounds Prohibited

1. It is unlawful for any person within the city to make, create, or permit an unreasonable noise disturbance, whether from a stationary or intermittent sound source, and which can be heard and measured in the manner prescribed herein, except when made in connection with a special event permit where specific terms, limits, and conditions, concerning noise are set forth.
2. It is unlawful for any person within the city to operate, drive, or be in possession of a vehicle which is stopped, standing, parked, or moving, and to make, create, or permit an unreasonable noise disturbance and which can be heard and measured in the manner as would prescribed herein, except for an emergency vehicle used in its official capacity.
3. It shall be unlawful for any person to sell, lease, rent or install any device or modified/alterd muffler or sell, rent, lease or operate any motor vehicle, engine or mechanical device with a device or modified/alterd muffler which when attached to or placed upon such motor vehicle, engine or mechanical device amplifies or increases the noise emitted by it above that emitted by the motor vehicle, engine or mechanical device or muffler in its original factory design.

D. Standards and Measurement. For purposes of determining whether any sound is an unreasonable noise disturbance, the following measurements standards apply:

1. Distance of Measurement on Private Property. Sound from a source on private property shall be measured at or inside the nearest property boundary of property other than that on which the sound source is located and at a height of four (4) feet above the ground.
2. Distance of Measurement on Public Property. Sound from a source on public right-of-way may be measured on that property so long as the measurement is taken at least twenty-five feet from the source, or it may be measured at or inside the property boundary of property other than the public right-of-way on which the sound source is located. Either measurement shall be taken at four (4) feet above the ground.
3. Sound Level Meters. Any unreasonable noise disturbance shall be measured on the A-weighted scale using sound level meters.
4. Wind Velocity. Measurements with sound level meters shall be made when wind velocity at the time and place of the measurement is not more than five (5) m.p.h., or twenty-five (25) m.p.h. with a windscreen.
5. Ambient Noise Level. In all sound level measurements consideration shall be given to the effect of the ambient noise level created by the encompassing sound of the environment from all sources at the time and place of the sound level measurement.
6. Multiple Zones. When a noise source can be identified and its noise measured in more than one zone or category, the limits of the most restrictive zoning classification shall apply at the boundaries between different zoning classifications. Noise levels for any planned unit development shall conform applicable levels by the predominant land use as set forth in the planned unit development plan.

E. Impermissible Sound Source Levels

1. Any stationary sound source which creates a sound pressure level which exceeds the decibel levels and time limits in the zones set

forth in Table 1, measured at a distance in accordance with the requirements of subparagraph TBD above.

Table 1 – Stationary Sound Source Decibel/Time Chart by maximum dB(A).

Zone	7:00AM - 8:00PM	8:00PM - 7:00AM	FRIDAY/SATURDAY 8:00PM - 11:00PM
Parks Districts; P1 and P2	70	64	70
Residential District; R1	70	64	70
Residential District; R2	76	64	70
Commercial/Industrial Districts; C1 and C-2	76	64	76

2. Construction projects shall be subject to the maximum permissible noise levels specified for each zone in Table 1 above from 7:00 AM until 8:00 PM during the time frame construction is allowed pursuant to any applicable permit issued by the City, or if no time frame is imposed pursuant to such permit, then for a reasonable period for completion of the construction project, excluding emergency work of public service utilities.

3. Any intermittent sound source which creates a sound pressure level which exceeds the decibel levels and time limits in the zones set forth in Table 2 for any measurement period of no less than thirty (30) seconds, measured at a distance in accordance with the requirements of subparagraph TBD above.

Table 2 – Intermittent Sound Source Decibel/Time Chart by maximum dB(A)s.

Zones	7:00 AM – 8:00 PM	8:00 PM – 7:00 AM
All Zones	80	70

4. Any moving vehicle which emits a sound pressure level more than levels established in Table 3, measured at a distance in accordance with the requirements of subparagraph TBD above.

Table 3 – Vehicle Decibel Limit Per Weight/Vehicle Class.

Vehicle Class	Maximum dB(A) Levels
Motorcycles	80
Any vehicle greater than ten thousand (10,000) lbs. manufacturers gross vehicle weight; other than an interstate motor carrier	88
Other Vehicles	80

G. Affirmative Defenses

1. The sound was made by an authorized emergency vehicle when responding to an emergency call or acting in time of emergency.
2. The sound was made within the terms of a snow removal, parade, fireworks display, or temporary street closure permit issued by the city, or was made by the rendering of military honors at a funeral by a military funeral honors detail.
3. The sound was made by an animal.
4. The sound was made by the sounding of the horn of any vehicle as a danger warning signal or by the sounding of any warning device as required by law.
5. The sound was made on property belonging to or leased or managed by a federal, state or county governmental body and was made by an activity of the governmental body or by others pursuant to a contract, lease, or permit granted by such governmental body.
6. The motorcycle was manufactured prior to 1983 and internal chambers or baffler plates are installed in accordance with manufacturer's requirements and are in good working order as shown by proof of an inspection from a qualified motorcycle mechanic dated within 30 days after a violation issued.
7. The motorcycle was manufactured after December 31, 1982, equipped with an exhaust muffler bearing the Federal EPA required labeling applicable to the motorcycle's model year, as required under 40 C.F.R § 205.150 through 205.174 and proof the muffler or muffler system was in good working order as shown by proof of an inspection from a qualified motorcycle mechanic dated within 30 days after a violation issued in good working order

as shown by proof of an inspection from a qualified motorcycle mechanic dated within 30 days after a violation issued.

8. The sound was made within the terms and conditions of a sound level variance granted by the City Administrator or other's authorized representative. A variance shall be granted after application is made if the manager finds that compliance will cause an undue hardship and further finds that:
 - a. Additional time is necessary for the applicant to alter or modify the activity or operation to comply with this section; or
 - b. The activity, operation or sound source will be of temporary duration, and even with the application of the best available control technology cannot be done in a manner that would comply with this section. In either case, the City Administer must also find that no reasonable alternative is available to the applicant. If the variance is granted, a writing shall prescribe such reasonable conditions or requirements as are necessary to minimize adverse effects upon the community or the surrounding neighborhood.

H. Penalties

1. Any person violating any section of this chapter, performing any act which is prohibited or declared unlawful by this chapter or permitting or causing any sound over the limits set forth within this chapter shall, upon conviction thereof, be subject to a fine in a sum not to exceed that set forth by resolution by City Council from time to time.
2. This section shall not be construed to conflict with the right of any person to maintain an action in equity to abate a noise nuisance under the laws of the state.
3. Each offense of violation of this section constitutes a separate and distinct violation.
4. Citations for violations of subsection C-3 above shall be limited to circumstances where the officer has observed loud orecessive noise that based upon the officer's experience and training sounds louder than a normal exhaust or circumstances where the officer has probable cause to investigate the vehicle

based upon a citizen complaint involving excessive or unreasonable noise. Officers have the right to initiate a traffic stop to further investigate the motor vehicle's exhaust system under such circumstances.

5. As an additional remedy, the operation or maintenance of any sound source in violation of any provisions of this Section which causes discomfort or annoyance to reasonable persons of normal sensitivity or which endangers the comfort, repose, health, or peace of residents within the city shall be deemed and is declared to be a public nuisance in accordance with OMC, Section 10-4 Nuisances Prohibited.

SECTION 3: EFFECTIVE DATE.

The provisions of this Ordinance shall become effective 30 days following publication in accordance with City Charter, 3.5-G.

SECTION 4: SEVERABILITY.


If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

INTRODUCED, READ, APPROVED AS INTRODUCED, AND ORDERED PUBLISHED on first reading by 4 to 0 vote of the Ouray City Council this 19th day of April 2021.

CITY OF OURAY, COLORADO


Greg Nelson, Mayor

ATTEST:


Melissa M. Drake, City Clerk

INTRODUCED, READ, AND ADOPTED on second reading by 5 to 0 vote of the Ouray City Council this 3RD day of May 2021.

CITY OF OURAY, COLORADO


Greg Nelson, Mayor

ATTEST:

Melissa M. Drake
Melissa M. Drake, City Clerk

CERTIFICATE OF ATTESTATION

I, Melissa M. Drake, Ouray City Clerk, hereby certify that Ordinance No. 3 (Series No. 2021), was introduced, read, and passed by the Ouray City Council on first reading on APRIL 19, 2021. The Ordinance was published, in summary, in the *Ouray County Plaindealer* on APRIL 22, 2021, and thereafter introduced, read, and adopted by the Ouray City Council on MAY 3, 2021, and thereafter published in the *Ouray County Plaindealer*, as required by law.

Melissa M. Drake
Melissa M. Drake, City Clerk