

ORDINANCE NO. 19-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 17-101, 17-103, 17-104, 17-105, 17-106, 17-107; REDEFINING RESIDENTIAL, COMMERCIAL AND INDUSTRIAL ZONES FOR NOISE AND WAIVER PURPOSES; ALLOWING FOUR NOISE WAIVERS PER TWELVE MONTH PERIOD; AND PROVIDING THAT ANY VIOLATION IS A MUNICIPAL INFRACTION AND RETAINING OTHER ADDITIONAL LEGAL REMEDIES SUCH AS ABATEMENT OR INJUNCTION.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY BILLINGS THAT:

Section 1. That section 17-101 of the Billings, Montana City Code is amended so that such section shall read as follows:

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.

Average permissible noise limits means the highest average noise level measured using the average equivalent A-weighted sound pressure level (LA_{Seq}) metric.

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 ten-fold increase will result in a 20-decibel increase in sound pressure level.

Emergency work 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.

Maximum permissible noise limit means the highest allowable noise level measured using the maximum A-weighted sound pressure level ($L_{A_{max}}$) metric

Residential area includes all residential zones within the City:

~~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 eCommercial" includes all commercial zones within the City:

~~Commercial-highway;~~

~~Commercial-general;~~

~~Commercial-central.~~

"Industrial" includes all industrial zones within the City:

Industrial light;

Industrial heavy.

Section 2: That section 17-103 of the Billings, Montana City Code is amended so that such section shall read as follows:

Sec. 17-103. - Noise limitations.

- (a) The maximum permissible decibel noise exposure limits on noise emitting from non-exempt noise sources in residential, commercial and industrial districts are as follows provided in Table 1 below.
- (b) At boundaries between zones, the lower of the dB(A) level shall be applicable. (Mayor's edit from July 11 meeting)
- (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 1 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 17-104. (Mayor's edit from July 11 meeting)

Table 1—Limitations

Districts	7:00 a.m.—8:00 p.m.	8:00 p.m.—7:00 a.m.
Residential	65 dB(A)	55 dB(A)
Light c <u>ommercial</u>	80 dB(A)	60 dB(A)
Heavy commercial	85 dB(A)	70 dB(A)
Industrial	90 dB(A)	80 dB(A)

<u>Maximum Permissible Noise Limits</u>		
<u>Zone</u>	<u>Day</u> <u>7 AM-8 PM</u>	<u>Night</u> <u>8 PM-7 AM</u>
<u>Residential</u>	<u>65 dB(A)</u>	<u>55 dB(A)</u>
<u>Commercial</u>	<u>80 dB(A)</u>	<u>60 dB(A)</u>
<u>Industrial</u>	<u>90 dB(A)</u>	<u>80 dB(A)</u>
<u>Average Permissible Noise Limits</u>		
<u>Zone</u>	<u>Day</u> <u>7 AM-8 PM</u>	<u>Night</u> <u>8PM-7AM</u>
<u>Residential</u>	<u>55 dB(A)</u>	<u>45 dB(A)</u>
<u>Commercial</u>	<u>70 dB(A)</u>	<u>50 dB(A)</u>
<u>Industrial</u>	<u>80 dB(A)</u>	<u>70 dB(A)</u>

- (c) Noise measured by trained and qualified city officials on a complainant's property in excess of the limits established for the districts zones and times in Table I above constitutes *prima facie* evidence that such noise is a public nuisance, except in circumstances as provided in sections 17-104 and 17-105, or if a waiver has been granted under section 17-107. (Mayor's edits from July 11 meeting).

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

Section 3: That Section 17-104 of the Billings, Montana City Code is amended with new language so that such section shall read as follows:

Sec. 17-104 Hours of Authorized Outdoor Events

Unless granted a waiver from the times listed below pursuant to Section 17-107, non-emergency outdoor events exempted from noise level regulations pursuant to Section 17-105 shall conclude in accordance with the locations and times listed below:

Central Business District (CBD) and East Billings Urban Renewal District (EBURD):

Ten (10) O'clock p.m. Sunday Through Thursday

Eleven (11) O'clock p.m. Friday and Saturday

Outside The Central Business District and East Urban Renewal District: (Mayor's edits from July 11 meeting)

Nine (9) O'clock p.m. Sunday through Thursday

Ten (10) O'clock p.m. Friday and Saturday

Section 4: That Section 17-104 of the Billings, Montana City Code is renumbered and amended so that such section shall read as follows:

Sec. 17-1054. - Exemptions.

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

- (1) Noise 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;
- (4) Noise resulting from the operating of motorized lawnmowers fitted with equipment-type mufflers between the hours of 7:00 a.m. and 8:00 p.m.;
- (5) Noise caused by home or building repair, construction, or grounds maintenance between the hours of 7:00 a.m. and 8:00 p.m.;
- (6) ~~Permitted events held in stadiums or parks for which a waiver has been granted;~~
- (6) School Events: Reasonable activities conducted on school grounds and public parks places of public which are conducted in accordance with a Memorandum of Understanding in the manner in which such spaces are generally used including but not limited to school athletic and school entertainment events.

Provided however, the use of public address system loudspeakers, such as may be included in stadiums and similar venues, shall not be used other than for the official events those systems are designed for and for brief, occasional equipment checks as necessary. Athletic team practices and similar informal events that do not include a gathering of the public are specifically excluded from this exemption

- (7) Public Park Events: Athletic, musical and other events sponsored permitted in writing by the City Parks, Recreation and Public Lands Department and such permit provides a waiver. (**CM Neese addition at July 11, 2019, committee meeting**).
- (7)(8) Non-event Noise from public parks, schools, and recreational facilities between the hours of 7:00 a.m. and 8:00 p.m.
- (8)(9) Special events for which a waiver has been granted;
- (9)(10) Noise from construction or maintenance activities performed by the city, or at the direction of the city, including but not limited to solid waste retrieval, street sweeping, road maintenance, and snow removal;
- (10)(11) Noise from construction or maintenance activities performed in the public right-of-way for which a waiver has been granted;
- (11)(12) Noise from construction or maintenance activities for which a waiver has been granted;
- (12)(13) Other activities for which a waiver is granted pursuant to section 17-106.
- (14) City-sanctioned or permitted fireworks displays.

Section 5: That Section 17-105 of the Billings, Montana City Code is renumbered and amended so that such section shall read as follows:

Sec. 17-1065. - 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:

- (1) The noise shall be measured on a sound level meter meeting current American National Standards Institute (ANSI) 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. The meter shall

be capable of measuring and recording the average equivalent A-weighted sound pressure level (LAS_{eq}) and maximum A-weighted sound pressure level (LAS_{max}) metrics.

- (2) Noise measurements used to determine compliance must be made by trained and qualified city officials in accordance with the provisions of this ordinance and with the requirements stipulated in the training. This should not be interpreted as prohibiting individuals or organizations from hiring their own noise consultants to address environmental noise issues or respond to complaints, but third party results will not be used to issue violations.
- (3) The city will provide training to all officials responsible for noise monitoring under this ordinance. The training will address the content of this ordinance, the operation of noise monitoring equipment, the care and maintenance of noise monitoring equipment, proper noise monitoring techniques (including assessment and correction for ambient noise), appropriate noise metrics, and documentation of noise monitoring results.
- (4) Noise will be measured at complainant's property line closest to the noise source on a public boundary. In cases where this location would result in a measurement taken less than 25 feet from the source, the noise level will be measured at a distance of 25 feet or more from the source on the complainant's property on a public boundary. Noise will be measured continuously for 3-5 minutes at the specified location. **(Mayor's edits from July 11 meeting)**

- ~~(2) 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.~~

Section 6: That Section 17-105 of the Billings, Montana City Code is renumbered and amended so that such section shall read as follows:

Sec. 17-1076. - Waiver.

- (a) 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. Each day of an event shall require a separate approved waiver. Except for public construction projects, no more than four waivers may be granted involving the same location within twelve (12) months, from January 1 through December 31 of each calendar year. Events occurring in the Central Business District (CBD) and East Billings Urban Renewal District (EBURD) shall be exempt from this limit. A waiver granted pursuant to this section does not modify or eliminate: (1) any noise restrictions imposed in a Special Review or (2) other conditions restricting or prohibiting noise generating activities which have been imposed upon a specific property. All such conditions must be followed. Any waiver erroneously granted under such circumstances shall be void and of no effect.
- (b) Waiver review procedures established by the city shall include but not be limited to consideration of the following criteria:
 - (1) Whether the noise would endanger the public health, safety, or welfare;
 - (2) 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;
 - (3) The time of day the noise will occur;
 - (4) The duration of the noise;
 - (5) The loudness of the noise relative to the maximum permissible sound levels as set forth in this chapter;
 - (6) Whether the noise is continuous or intermittent;
 - (7) The distance of proposed activity from residential housing or other noise-sensitive properties;

- (8) Whether the proposed activity is within or outside of the Central Business District (CBD) or East Billings Urban Renewal District (EBURD), and whether the proposed activity encourages the promotion of entertainment and nightlife in an area where residential housing is sparse;
- (9) 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.
- (10) When practicable, waivers that are granted shall be posted on the City of Billings internet website. CM Neese request at 8-7-19 meeting.
- (c) Any waiver application may be granted, granted with conditions or denied by the city. Any applicant denied a waiver by the city may appeal the denial to the city council. An appeal must be presented to the City Administrator for inclusion on the next available City Council Regular agenda at least thirty (30) calendar days before the event is scheduled to occur.

Section 7: That Section 17-107 of the Billings, Montana City Code is renumbered so that such section shall read as follows:

Sec. 17-1087. - Violations; remedies.

- (a) Any violation of this article shall be punishable as a municipal infraction with civil penalties as provided in section 18-1304. 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.

PASSED by the City Council on first reading this ____ day of _____, 2019.

PASSED, ADOPTED and APPROVED on second reading this ____ day of _____, 2019.

CITY OF BILLINGS

William A. Cole, Mayor

ATTEST:

Denise Bohlman, City Clerk