

**CITY OF FAIRVIEW
BOARD OF COMMISSIONERS**

AUGUST 20, 2020

7:00 P.M.

AGENDA

- 1. Roll Call**
- 2. Call to Order**
- 3. Prayer and Pledge**
- 4. Approval of Agenda and Executive Session Announcements**
- 5. Public Hearing(s)**
- 6. Citizen Comments** (Limited to the first 5 citizens to sign in and a limit of 3 minutes each)
- 7. Public Announcements, Awards and Recognitions**
- 8. Staff Comments and Monthly Reports**
 - A. City Manager Report
- 9. Consent Agenda** (Any Item May be Removed for Individual Consideration)
 - A. Minutes from the August 6, 2020, Board of Commissioners Meeting
 - B. Minutes from the August 11, 2020, Joint Board of Commissioners and Planning Commission Work Session
- 10. Old Business**
- 11. New Business**
 - A. Ordinance 2020-17, An Ordinance to Amend the City of Fairview Noise Ordinance
 - B. Playground Presentation by Parks and Landscape Board
- 12. Communications from the Mayor and Commissioners**
 - A. Commissioner
 - B. Commissioner
 - C. Commissioner
 - D. Vice Mayor
 - E. Mayor
- 13. Meeting Adjournment**

ORDINANCE NO. 2020-17



AN ORDINANCE TO AMEND THE CITY OF FAIRVIEW NOISE OF

WHEREAS, the City of Fairview desires to amend its anti-noise regulations, and

WHEREAS, this amendment to the city's noise ordinance will serve the health, safety and welfare of the residents of the City of Fairview, and

NOW, THEREFORE BE IT ORDAINED BY THE CITY OF FAIRVIEW AS FOLLOWS:

Title 11, Chapter 4, Section 11-402, currently entitled "Anti-noise regulations" in its entirety is hereby amended to read as follows:

Subject to the provisions of this article, the creating of any unreasonably loud, disturbing and unnecessary noise is prohibited, including but not limited to those noises specifically prohibited under this division. Noise of such character, intensity or duration as to be detrimental to the life or health of any individual or in disturbance of the public peace and welfare is prohibited.

The standards which shall be considered in determining whether a violation of this section exists shall include, but shall not be limited to, the following:

The volume of the noise.

The intensity of the noise.

Whether the nature of the noise is usual or unusual.

Whether the origin of the noise is natural or unnatural.

The volume and intensity of the background noise, if any.

The proximity of the noise to residences or any sleeping facilities.

The nature and zoning of the area within which the noise emanates.

The density of inhabitation of the area within which the noise emanates.

The time of the day or night the noise occurs.

The duration of the noise.

Whether the noise is recurrent, intermittent or constant.

Whether the noise is produced by a commercial or non-commercial activity.

Whether voluntary compliance is obtained.

(a) Construction operations

The construction and construction related activities, erection, demolition, alteration or repair of any building in any area, the use of any motor-driven construction equipment, and the construction or repair of streets and highways in any area, other than between the hours of 7:00 a.m. and 8:00 p.m. Monday through Saturday, and between the hours of 9:00 a.m. and 5:00 p.m. on Sunday, is prohibited, except when the sounds generated by such activities are not plainly audible from adjacent properties, or when permitted by the city's planning department for a period not to exceed 30 consecutive days or 30 days in one calendar year. The decision of the planning department to allow work to be done outside of such hours shall be based on one or more of the following factors:

Public health or safety will be impaired by delay of the work.

Unreasonable loss or inconvenience would result through delay, and public health or safety will not be impaired by allowing the work to proceed.

The noise produced by such operations will not cause an unreasonable disturbance to the occupants of nearby properties.

Additionally, construction, excavations or repairs of bridges, streets, highways, or public utility facilities at any time, by or on behalf of the city, the county, the state, or a public utility, shall be permitted when the public welfare and convenience renders it impracticable to perform such work during the day.

(b) Cleaning of streets and parking areas.

The use of street sweepers or similar equipment for cleaning streets, drives and parking areas and parking lots between the hours of 11:00 p.m. and 6:00 a.m. is prohibited.

(c) Loading and unloading operations; delivery and service vehicles.

No person shall create or allow any loud and excessive noise in connection with: the loading or unloading of any vehicle; the delivery, opening and destruction of bales, boxes, crates or other containers; or the operation of any vehicle or equipment used in providing any service. In addition to any other disturbances of the public peace caused by such actions, the following restrictions shall apply:

At any non-residential property which is either immediately adjacent to or across a public roadway from residentially zoned property, deliveries and services shall be subject to the following prohibitions:

The pick-up or delivery of materials and products by parties other than retail customers shall be prohibited before 7:00 a.m. and after 9:00 p.m. on any day. The operation of any vehicle or equipment used in providing any maintenance

or repair service outside any building shall also be prohibited during the same hours if the sounds associated with such vehicle or equipment operations are plainly audible from the interior of any residence. Commercial delivery or service vehicles that arrive at any such non-residential property outside of such hours shall be parked on the opposite side of the building from the residentially zoned property. For the purposes of this section, the term "residentially zoned property" shall mean any property zoned in any residential zoning classification. "Non-residential property" means property within any other zoning district.

Any vehicle brought to any such non-residential property for the purpose of making pickups or deliveries may not be left in place with its engine or any auxiliary equipment, including but not limited to refrigeration units, compressors or generators, in operation for more than two hours.

The prohibitions contained in this section shall not apply to or be enforced in regard to:

Operations of the U.S. Postal Service or other parcel distribution facilities.

The provision of services at any time when a delay in the provision of such services would jeopardize public health or safety or would pose an unreasonable risk to any persons or property.

(d) Loudspeakers or amplifiers

The operation of any personal or commercial sound amplification or reproduction equipment in violation of the following standards shall be prohibited:

Sounds produced by such equipment on private property shall not be plainly audible at a distance of 50 feet beyond the property boundary between the hours of 10:00 p.m. and 7:00 a.m.

When such equipment is in a motor vehicle, the sound shall not be plainly audible at a distance of more than 50 feet from the vehicle.

When such equipment is not in a vehicle but is on a public street, sidewalk or other outdoor public property, the sound shall not be plainly audible at a distance of more than 100 feet in any direction from the equipment's speakers; provided further that no such equipment may be operated on a public street, sidewalk or other outdoor public property between the hours of 10:00 p.m. and 7:00 a.m., except within the interior of a vehicle.

The prohibitions contained in this section shall not apply to or be enforced in regard to:

(e) Noncommercial and nonprofit use of loudspeakers or amplifiers

The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character. However, no such use shall be allowed until a permit therefor is secured from the city's planning department. Hours for the use of an amplifier or public address system will be designated in the permit issued and the use of such systems shall be restricted to the hours designated in the permit.

(f) Use of loudspeakers or amplifiers at city sponsored or authorized events

The reasonable use of amplifiers and loudspeakers at events in city parks or on other public property between the hours of 8:00 a.m. and 10:00 p.m. when such use is authorized by the city. In the event that the use of amplifiers or loudspeakers has been authorized by the city at such an event, no other amplification of sound will be permitted within the area of the event except for that which has been authorized by the city.

(g) Use of loudspeakers or amplifiers at school events

The reasonable use of amplifiers and loudspeakers at athletic events and other functions at school stadiums and other school facilities where amplifiers or loudspeakers are customarily used, between the hours of 8:00 a.m. and 11:00 p.m. Discretion may be given for uses outside of these hours for extenuating circumstances such as weather delays, team travel restrictions, and circumstances where health and safety require the use of amplifiers and loudspeakers.

(h) Other authorized special events

The reasonable use of loudspeakers or amplifiers at special events approved by the city, subject to any conditions or restrictions regarding noise as may be prescribed by the city. In the event that a special event has been approved by the city, no other amplification of sound will be permitted within the area of the special event except for that which has been applied for and authorized by the city.

(i) Miscellaneous prohibited noises enumerated

In addition to other acts prohibited under this division, the following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this division, but this enumeration shall not be deemed to be exclusive, namely:

Blowing horns: The sounding of any horn or signal device on any automobile, motorcycle, bus, truck, or other vehicle except as a danger signal; the creation by means of any such signal device of any unreasonably loud or harsh sound;

and the sounding of such device for an unnecessary and unreasonable period of time.

Yelling, shouting, etc.: Yelling, shouting, whistling or singing on the public streets or other outdoor areas between the hours of 11:00 p.m. and 7:00 a.m., or at any time or place so as to annoy or disturb the quiet, comfort or repose of any persons in any hospital, dwelling, hotel or other type of residence, or of any person in the vicinity.

Pets: The keeping of any animal, bird or fowl which by causing frequent or long continued noise shall disturb the comfort or repose of any person in the vicinity.

Use of vehicle: The use of any automobile, motorcycle, truck, or vehicle so out of repair, so loaded or operated or equipped in such manner as to cause loud and unnecessary grating, grinding, rattling or other noise.

Exhaust discharge: To discharge into the open air the exhaust of any motor vehicle or other engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

Power tools and lawn maintenance: The use of any power tools, mowers or grounds keeping equipment that is plainly audible from the interior of any residence between the hours of 9:00 p.m. and 6:00 a.m.

Noises near schools, hospitals, churches, etc.: The creation of any excessive noise on any street or sidewalk adjacent to any hospital, school, institution of learning, church or other religious institution, or court while the same is in session.

Noise from commercial sites affecting residential property: The creation of any sound from the activities on a commercial site that can be heard on any residentially zoned property and exceeds 70 decibels, as measured from such residentially zoned property by using equipment operated or approved by the police chief or city manager. Decibel levels shall be measured on the A weighted scale, unless the city manager authorizes an alternate form of measurement. For the purposes of this section, the term "residentially zoned property" shall mean any property zoned in any residential zoning classification. "Non-residential property" means property within any other zoning district.

(j) "Plainly audible" definition

The term "plainly audible" means any sound that clearly can be heard by human ears, provided that words or phrases need not be discernible and such sound may include bass reverberation.

(k) Exceptions

None of the terms or prohibitions of this article shall apply to or be enforced in regard to:

Government vehicles: Any vehicle of the city, county or state while engaged upon necessary public business.

Authorized special events: Sounds associated with special events, as approved by the city, in addition to those sounds produced by the reasonable use of loudspeakers or amplifiers allowed under this division, subject to any conditions or restrictions regarding noise as may be prescribed by the city.

Bells and chimes: Periodic sounding of bells and chimes from properties zoned for service-institution uses, provided that such bells and chimes may not be sounded between 10:00 p.m. and 8:00 a.m.

Emergency warnings: The sounding of tornado sirens, lightning detectors, public address systems and other such devices when necessary to warn the public of dangerous conditions, provided further that such devices may also be tested as needed to insure proper functionality.

Fireworks displays: The display of fireworks when a permit has been issued for such display by the city, subject to the conditions of said permit.

(l) Responsibility for violations.

Whenever a violation of any of the provisions within this division occurs, any of the following individuals or entities may be held responsible, taking into account the circumstances involved in the violation:

The operator of any vehicle or equipment from which the noise is generated.

The owner of any vehicle or equipment from which the noise is generated.

Any person carrying out any delivery or service which generates noise in violation of this division.

The owner of the property at which a delivery or service is carried out or from which a noise is generated in violation of this division.

The owner of any business for which a delivery or service is carried out or from which a noise is generated in violation of this division.

Any person otherwise creating a noise in violation of this division.

Any person who has the authority and ability to prevent the emission or continuation of a noise which violates this division, but fails to do so.

The city's police officers and codes enforcement officers may, at their discretion in consideration of the situation, cite any of the individuals or entities identified in this section for any violation of the provisions within this division.

BE IT FURTHER ORDAINED, that any language or sub-section previously set forth in Title 11, Chapter 4, Section 11-402, is hereby repealed, and

BE IT FURTHER ORDAINED, that if any sentence, clause, phrase or paragraph of the ordinance is declared to be unconstitutional by any court of competent jurisdiction such holding will not affect any other portion of this ordinance, and

BE IT FURTHER ORDAINED, that this ordinance shall take effect fifteen (15) days after its second reading and adoption.

Approved by the City of Fairview board of commissioners this _____ day of _____, 2020.

MAYOR

CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY

Passed First Reading _____

Passed Second Reading _____