

AN ORDINANCE AMENDING CHAPTER 9.30
(REGULATION OF NOISE)
OF THE EVANSVILLE MUNICIPAL CODE

Whereas, the City of Evansville currently regulates excessive noise in Chapter 9.30 of the Evansville Municipal Code;

Whereas, noise that prohibits, disrupts, injures, or endangers the health, safety, welfare, prosperity, comfort, or repose of persons of ordinary sensitivities within the city constitutes a public nuisance;

Whereas, regulation of noise is necessary and proper for in order to preserve the health, safety, welfare, and quality of life of the City's citizens; and

Whereas, the Evansville Common Council deems it necessary and proper to revise certain provisions within the existing noise ordinance for the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Evansville, Indiana as follows:

Section 1. Amendment of Chapter 9.30 of the Code. Chapter 9.30 of the Evansville Municipal Code shall be amended as follows:

9.30.010 Definitions.

For purposes of this chapter, the following definitions shall apply:

"Construction" means any site preparation, assembly, erection, repair, alteration or similar action of buildings or structures.

~~"Decibel" or "dB" means a unit used to express the magnitude of the change in sound intensity or sound pressure level. The difference in decibels between a measured sound pressure level and a reference sound pressure level is 20 times the logarithm of their ratio. For purposes of this chapter, the term "decibel" shall be consistent with its definition and use by the American National Standards Institute.~~

"Demolition" means any dismantling, destruction or removal of buildings, structures, or roadways.

"EPA" means the Evansville Environmental Protection Agency.

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Jana Winkler
CITY CLERK

“EPD” means the Evansville Police Department.

“Emergency work” means any work or action necessary at the site of an emergency to restore or deliver essential services including, but not limited to, repairing water, gas, electricity, telephone, sewer facilities, or public transportation facilities, removing fallen trees on public rights-of-way, dredging navigational waterways, or abating life-threatening conditions or a state of emergency declared by a governing agency.

“Minor violation” means a violation that is not the result of the purposeful, reckless, or criminally negligent conduct of the alleged violator; and/or the activity or condition constituting the violation has not been the subject of an enforcement action by any authorized local, County, or State enforcement agency against the violator within the immediately preceding 12 months for the same or substantially similar violation.

“Motor vehicle” means any vehicle that is propelled other than by human or animal power on land.

“Muffler” means a properly functioning sound dissipative device or system for abating the sound on engines or equipment where such device is part of the normal configuration of the equipment.

“Multi-dwelling unit building” means any building comprising two or more dwelling units, including, but not limited to, apartments, condominiums, co-ops, multiple family houses, townhouses, and attached residences.

“Multi-use property” means any distinct parcel of land that is used for more than one category of activity. Examples include, but are not limited to:

(1) A commercial, residential, industrial, or public service property having boilers, incinerators, elevators, automatic garage doors, air conditioners, laundry rooms, utility provisions, or health and recreational facilities, or other similar devices or areas, either in the interior or on the exterior of the building, which may be a source of elevated sound levels at another category on the same distinct parcel of land; or

(2) A building, which is both commercial (usually on the ground floor) and residential property, located above, below or otherwise adjacent to.

“Outdoor event” means an event held at a location generally without a permanent structure, including events (a) with no roof or a partial a roof, (b) in a tent or similar temporary structure, and/or (c) not fully enclosed by permanent walls and glass. Outdoor events may include (but are not limited to) auctions, concerts, public entertainment, shows, or any similar, infrequent,

short-term event.

“Plainly audible” means any sound that can be detected by an EPD or EPA officer using his or her unaided hearing faculties of normal acuity. As an example, if the sound source under investigation is a portable or vehicular sound amplification or reproduction device, the detection of the rhythmic bass component of the music is sufficient to verify plainly audible sound. The EPD or EPA need not determine the title, specific words, or the artist performing the song.

“Private right-of-way” means any street, avenue, boulevard, road, highway, sidewalk, alley or easement that is owned, leased, or controlled by a non-governmental entity.

“Public right-of-way” means any street, avenue, boulevard, road, highway, sidewalk, alley, or easement that is owned, leased, or controlled by a governmental entity.

“Public space” means any real property or structures thereon that are owned, leased, or controlled by a governmental entity.

“Real property line” means either (1) the vertical boundary that separates one parcel of property (i.e., lot and block) from another parcel of property; (2) the vertical and horizontal boundaries of a dwelling unit that is part of a multi-dwelling unit building; or (3) on a multi-use property as defined herein, the vertical or horizontal boundaries between the two portions of the property on which different categories of activity are being performed (e.g., if the multi-use property is a building which is residential upstairs and commercial downstairs, then the real property line would be the interface between the residential area and the commercial area, or if there is an outdoor sound source such as an HVAC unit on the same parcel of property, the boundary line is the exterior wall of the receiving unit).

“Sound production device” means any device whose primary function is the production of sound, including, but not limited to any musical instrument, loudspeaker, radio, television, digital or analog music player, public address system or sound-amplifying equipment.

“Unreasonable noise” means sound that is of a volume, frequency, or pattern that prohibits, disrupts, injures, or endangers the health, safety, welfare, prosperity, comfort, or repose of reasonable persons of ordinary sensitivities within the city, given the time of day and environment in which the sound is made.

“Weekday” means any day that is not a Federal holiday, and beginning on Sunday at 7:00 a.m. and ending on the following Friday at 12:00 midnight.

“Weekends” means beginning on Friday at 12:00 midnight and ending on the following Sunday at 7:00 a.m.

9.30.020 Applicability

(A) The provisions of this chapter apply to sound from motor vehicles and the following property districts as such districts are defined in Title 18 of the Evansville Municipal Code:

- (1) Residential Districts;
- (2) Commercial Districts (including, among others, bars and restaurants);
- (3) Waterfront Districts;
- (4) Industrial Districts;
- (5) Special Districts;
- (6) Multi-use properties;
- (7) Public and private right-of-ways; and
- (8) Public spaces.

(B) The provisions of this chapter apply to sound received at the following property districts as such districts are defined in Title 18 of the Evansville Municipal Code:

- (1) Residential Districts;
- (2) Commercial Districts (including, among others, bars and restaurants);
- (3) Waterfront Districts;
- (4) Special Districts;
- (5) Multi-use properties;
- (6) Public and private rights-of-ways; and
- (7) Public spaces.

(C) The provisions of this chapter shall not apply to the following:

- (1) Sound emitted by required emergency work, safety signals, safety devices, and

unregulated safety valves;

- (2) Sound emitted by authorized emergency vehicles;
- (3) Burglar alarms on motor vehicles;
- (4) Non-domestic farm animals and agricultural activities;
- (5) Bells, chimes, or carillons, which may include electronic devices that imitate the sounds of bells, chimes, or carillons, while being used in conjunction with religious services;
- (6) National Weather Service systems used to warn the community of weather events or public danger;
- (7) Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations, and air traffic control and instructions and pursuant to and within the duly adopted federal air regulations. Any aircraft operating under technical difficulties in any kind of distress, under emergency orders of air traffic control, or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations is also exempt;
- (8) Public celebrations, parades, events, and concerts which are school-sponsored, government-sponsored, or permitted by an authorized government entity, including, but not limited to, school marching bands and festivals with valid City permits to conduct such festivals;
- (9) Surface carriers engaged in commerce by railroad when the noise sources in question are trains in motion, operating retarders, train horns and whistles, or performing locomotive load test cell stands;
- (10) The unamplified human voice;
- (11) Use of fireworks or explosive devices on approved dates and times;
- (12) Normal operation of a firearm, handgun, rifle, shotgun, or a range for such purposes, including those for skeet shooting or trapshooting;
- (13) Emergency electricity generators in use during an emergency electrical grid outage;
- (14) Temporary construction and demolition activity to the extent such activity is

properly permitted by the applicable local and state agencies;

(15) Lawn and garden equipment operated by the owner or occupant or on behalf of the owner or occupant of the property on which the equipment is being operated between dawn and dusk, except that such equipment may not be operated prior to 7:00 a.m. on Sunday;

(16) Sound emitted by authorized municipal vehicles while in performance of official municipal functions (including, but not limited to, snowplows);

(17) Sound emitted by trash and solid waste haulers;

(18) Sound emitted by dogs and cats, except for repeated and prolonged sound by such animals between 9:00 p.m. and 6:00 a.m.; and

(19) Sound production devices required or sanctioned under the Americans with Disabilities Act, FEMA, or other government agencies to the extent that they comply with the noise requirement of the enabling legislation or regulation.

9.30.030 Enforcement Officers

Both the EPD and the EPA shall have the authority within their designated jurisdiction to investigate suspected violations of any section of this ordinance and pursue enforcement activities.

9.30.040 Measurement Protocols

(A) Insofar as practicable, sound will be ~~measured-observed~~ while the source under investigation is operating at normal, routine conditions and, as necessary, at other conditions including, but not limited to, design, maximum and fluctuating rates.

(B) All ~~tests-observations~~ shall be conducted in accordance with the following procedures:

(1) The investigator shall, to the extent practicable, identify all sources contributing sound to the point of measurement.

(2) Measurements ~~or observations for purposes of Table I and Table II below~~ shall, to the extent practicable, be taken without interfering noise sources on such residence (e.g., with any home appliances turned off).

(3) Measurements shall be taken at or within the real property line of any affected person or entity.

(4) ~~The sound level meter should be recalibrated at least once per year. A copy of written documentation of such recalibration, in a form approved by the EPD, shall be kept with the equipment to which it refers.~~

(5) ~~No outdoor measurements shall be made: (a) during periods when the wind speed exceeds 12 miles per hour (including gusts) without a wind screen properly attached to the measuring device; (b) under any condition which allows the measuring device to become wet, such as rain, snow, or condensation; and (c) when the ambient temperature is below 14 degrees F (10 degrees C) or above 122 degrees F (50 degrees C).~~

(6) ~~Tests~~ Observations conducted indoors should be ~~measured~~ made with doors and windows to the receiving area closed.

9.30.050 Maximum Permissible Sound Levels

(A) Levels specified in this section shall be determined by the general nature of the affected district, and not the nature of the specific receiving property upon which the sound is measured. For example, if an affected district is primarily industrial in nature, the limits prescribed in this section for industrial properties are applicable, even if the particular parcel upon which the sound is measured is residential in nature.

(B) No person shall cause, suffer, allow, or permit the operation of any source of sound on any source property listed in 9.30.020(A) above in such a manner as to create an unreasonable sound level that persists continuously or intermittently for a period of at least fifteen (15) minutes equals or exceeds the sound level limits set forth in Tables I or II when ~~measured~~ observed at or within the real property line of any of the receiving properties, ~~listed in Tables I or II~~ except as specifically permitted in this chapter.

Table I
Residential Districts, or Residential Portions
of a Waterfront or Multi-use Property

Time	Sound Level Limit (dB)
At all times	75 dB

Table II
Commercial Districts (including, among others, bars and restaurants),
Waterfront Districts, Special Districts,
Public and Private Right-of-ways, and Public Spaces

Time	Sound Level Limit (dB)
At all times	80 dB

(C) Notwithstanding the foregoing subsection (B), the following regulations shall apply to sound emitted from motor vehicles:

(1) No motorcycle shall be operated stationary or in motion unless it has a muffler that complies with and is labeled in accordance with the Federal Noise Regulations under 40 CFR Part 205.

(2) It shall constitute a violation of this chapter for any person to operate, cause to operate, or use a motor vehicle so as to cause noise levels above 80 dB as a result of a defective or modified exhaust system; acceleration, deceleration, revving, or tire squeal.

(3) Personal or commercial vehicular music amplification or reproduction equipment shall not be operated in such a manner that it is plainly audible at a distance of 25 feet in any direction from the operator between the hours of 10:00 p.m. and 8:00 a.m.

(4) Personal or commercial vehicular music amplification or reproduction equipment shall not be operated in such a manner that is plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 a.m. and 10:00 p.m.

(D) Any outdoor event using loud-speakers or other form of artificial or electric amplification may not continue said amplification between 10:00 p.m. and 7:00 a.m. Sunday through Thursday evenings, and between 11:00 p.m. and 7:00 a.m. on Friday and Saturday evenings.

(E) A determined violation of this chapter may not be based on the content of any message conveyed during the creation of any noise or the identity of the person responsible for or associated with the creation of any noise.

9.30.060 Enforcement

(A) Any person with a non-minor violation of any provision of this chapter may be issued a citation for a violation of City ordinance. Whenever any law enforcement officer issues a citation for violation of this chapter, he or she shall take down the name, address, and (if applicable) operator's license number and registration number of the vehicle and shall issue to the alleged violator in writing a citation for a violation of this chapter.

(B) Penalties for non-minor violations of this chapter occurring within a 12-month period shall not be less than those provided by the following:

(1) First violation: Formal written warning

- (2) Second violation: \$500.00
- (3) Third violation: \$1500.00
- (4) Fourth violation: \$5000.00
- (5) Fifth and subsequent violations: \$5000.00 to \$7,500.00

(C) The EPD or EPA may, subject to appeal to the Board of Public Safety, suspend, cancel, or refuse to issue or renew any applicable permit provided in the Evansville Municipal Code relating to the violation committed.

(D) If the EPD or EPA action pursuant to subsection (C) of this section is appealed, the Board of Public Safety shall fix a place and time not less than 48 hours or more than 72 hours (excluding Saturdays, Sundays, and legal holidays) thereafter for a hearing to be held before the Board of Public Safety. Not more than 24 hours after the commencement of such a hearing, the board shall affirm, modify, or set aside the order of the EPD or EPA.

(E) A violation of subsection (D) shall be assessed a penalty of not less than \$100.00 and not more than \$7,500 per violation, per day.

Section 2. Effective Date. This ordinance shall be in full force and effect on the day of its final passage and adoption.

Passed and adopted by the Common Council of the City of Evansville, Indiana, on the ____ day of _____, 2022, and signed by the President of the Common Council and attested by the City Clerk.

Zac Heronemus, President
Common Council of Evansville, Indiana

I attest to the passage and adoption of the foregoing by the Common Council of the City of Evansville, Indiana, on the above date and that the same, having been presented to me, was delivered to the Mayor of said City, the ____ day of _____, 2022, at ____ o'clock __.m. for the Mayor's consideration and action thereon.

Laura Windhorst, City Clerk
City of Evansville, Indiana

Having examined the foregoing ordinance, I do now, as Mayor of the City of Evansville, Indiana, approve said ordinance and return the same to the City Clerk this ____ day of _____, 2022.

Lloyd Winnecke, Mayor
City of Evansville, Indiana