passed 7-0
Diekhoff + Rollo
absent

ORDINANCE 07-16

TO AMEND TITLE 14 OF THE BLOOMINGTON MUNICIPAL CODE, ENTITLED "PEACE AND SAFETY"
(Providing a Comprehensive Revision of Chapter 14.09, entitled "Noise Control")

WHEREAS, pursuant to its police power, the City of Bloomington adopted a Noise Control Ordinance in 1973 in order to protect its citizens from unreasonable and offensive noise; and

WHEREAS, the Noise Control Ordinance has, from time to time, been amended in part but has not been substantially updated since its original adoption; and

WHEREAS, the City of Bloomington deems it necessary to comprehensively update its Noise Ordinance in order to respond to changes in the law as well as current and contemporary concerns of its citizens and to preserve the quality of life for those who live within the City of Bloomington;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. The current provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.010 *Public policy and purpose* shall be amended to read as follows:

It is declared to be the public policy of the city to prohibit unreasonable, unnecessary, excessive and offensive noise from all sources subject to its police power. Above certain levels noise is detrimental to the health, welfare, safety, comfort, and repose of the citizenry and in the public interest shall be systematically regulated and proscribed by the city.

SECTION 2. The current provisions contained in Chapter 14.09 of the Bloomington Municipal Codes, Section 14.09.020 *Definitions* shall be amended to list the items alphabetically, delete the letters in parentheses prior to each item, and to read as follows:

As used in this chapter unless context clearly requires otherwise:

"Baffle" means a device to deflect, check or regulate the flow or passage of sound.

Classification of areas into residential, school, hospital, church, commercial manufacturing and/or business zones for purposes of this chapter shall be as defined in the then existing city zoning ordinance. For purposes of this chapter hospital, school and church zones shall be considered as residential zones.

"Emergency work" 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 or work by private or public utilities when restoring utility service.

"Holidays" means the following six days as observed according to Indiana Code 1-1-9-1: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

"Motor vehicles" means and includes any and all self-propelled vehicles as defined by IC 9-13-2-105(a).

"Muffler" means any device used upon a motor vehicle whose purpose is the deadening of combustion noises of any engine thereon, or the deadening of any other motor noises, including but not limited to the noise of exhaust gases, or any other mechanical device for the deadening of the noise and intake gases upon a motor vehicle.

"Person" means a person, firm, association, co-partnership, joint venture, corporation, or any entity, public or private in nature.

"Pneumatic hammers" when used in Section 14.09.040 means pneumatic hammers that are driven by compressors with greater than ten horsepower or that use a hose with a diameter greater than three-eighths of an inch.

"Premises" means a place in which a person has right of legal, private occupancy.

SECTION 3. The current provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.030 *Sound pressure level or noise measurements* shall be deleted.

SECTION 4. The provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.040 *Sound pressure level limits in dB(A) for single noise or sound sources in residential, business and manufacturing zones* shall be deleted.

SECTION 5. The provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.050 *Noises Prohibited* shall be renumbered as 14.09.030 and shall be amended to read as follows:

(a) For purposes of this chapter, unreasonable noise shall mean sound that is of a volume, frequency, or pattern that prevents, disrupts, injures, or endangers the health, safety, welfare, prosperity, comfort or repose of reasonable persons of ordinary sensitivities within the City of Bloomington, given the time of day or environment in which the sound is made.

(b) Except as otherwise provided in this chapter, it shall be unlawful for any person to cause or make any unreasonable noise or to allow any unreasonable noise to be caused or made in or on any real or personal property occupied or controlled by that person.

(c) In addition to the foregoing, the following acts are violations of this chapter:

(1) It shall be a violation of this chapter to operate a motor vehicle with an internal combustion, steam or air motor unless the motor vehicle is equipped with a suitable and efficient muffler or baffle. A muffler or baffle shall be considered suitable and efficient, for purposes of this chapter, when the vehicle does not create unreasonable noise. Except by specific governmental authorization given by the mayor or his or her duly authorized representative, no person while on a public or private highway, street or road shall operate a motor vehicle with the muffler or baffle cut out or removed. No cutout shall be so arranged or connected as to permit its operation or control by the driver of any motor vehicle while in position for driving or by a passenger of any motor vehicle.

(2) Except as used for warning purposes, it shall be a violation of this chapter for any person to use, operate or sound any horn or signaling device on any motor vehicle in any public street or public place in the City for any unreasonable period of time.

(3) It shall be a violation of this chapter to play, use, or operate or allow to be played, used, or operated in any motor vehicle any radio, television, digital media player, loudspeaker, sound amplifier, musical instrument, or any other machine or device for producing or reproducing sound at a volume that is louder than necessary for the convenient hearing of persons who are inside the vehicle within which such device is played, used or operated. Sound that is clearly audible thirty feet or more from the vehicle is prima facie evidence of a violation of this section.

(4) It shall be a violation of this chapter to play, use, operate or allow to be played, used, or operated any radio, television, digital media player, loudspeaker, sound amplifier, musical instrument, or any other machine or device for producing or reproducing sound in such a manner that the sound produced persists continuously or intermittently for a period of at least fifteen minutes and can be heard outside the immediate premises from the location of the emitter by a person with normal hearing. Sound that is clearly audible to a person with normal hearing from any place other than the premises from which the source of the sound is located, when the sound occurs between the hours of 9:00 p.m. and 7:00 a.m., is prima facie evidence of a violation of this section.

SECTION 6. The provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.060 *Exemptions* shall be renumbered as Section 14.09.040 and shall be amended to read as follows:

The following uses and activities shall be exempt from the provisions of this chapter:

(a) Nonamplified crowd noises resulting from legal activities, between the hours of 6:00 a.m. and 10:00 p.m.;

(b) Construction operations for which building permits have been issued or construction operations for which a permit is not required shall be exempt from the noise control ordinance under the following conditions and with the following exceptions:

(1) Such operations that occur after 6:00 a.m. and before 10:00 p.m., except on Sundays and holidays, as defined in Section 14.09.020. However, in recognition of the work necessary to prepare and close a site each day, motor vehicles transporting heavy construction equipment or construction materials to and from construction sites at those times shall be exempt from the time restrictions set forth above.

(2) Because of the loud and unusual sounds, and the ground vibrations associated with pile drivers, steam shovels, pneumatic hammers, and steam or diesel gasoline hoists, the operation of this equipment shall be exempt but only when it occurs between the hours of 7:00 a.m. and 8:00 p.m. or when allowed by special permit.

(3) In order to be exempt, all equipment used in such operations shall be operated with the manufacturer's mufflers and noise reducing equipment in use and in proper operating condition.

(c) Noises of safety signals, warning devices, and emergency pressure relief valves;

(d) Noises resulting from any authorized emergency, fire or police vehicle when responding to an emergency call, acting in time of emergency or in connection with official police or fire department business;

(e) Noises resulting from emergency work as defined in Section 14.09.020;

(f) Noises made by churches using bells as part of their religious observance and by persons having obtained a permit to use the streets;

(g) 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;

(h) All noises resulting from normal operations of railroad trains are exempt as provided by state or federal law;

(i) Noises resulting from burglar alarms and other warning devices when properly installed, providing the cause for such alarm or warning device sound is investigated and turned off within a reasonable period of time;

(j) Noises resulting from rubbish collection utilizing any mechanical equipment between the hours of 5:00 a.m. and 10:00 p.m. only;

(k) Noises associated with equipment or animals lawfully utilized by persons with disabilities to accommodate their disability;

(l) Noises associated with legal consumer fireworks used during the times Indiana Code prohibits regulation by municipalities, which are as follows:

(1) Between the hours of 5:00 p.m. and two hours after sunset on June 29, June 30, July 1, July 2, July 3, July 5, July 6, July 7, July 8, and July 9;

(2) Between the hours of 10:00 a.m. and 12:00 midnight on July 4; and

(3) Between the hours of 10:00 a.m. on December 31 and 1:00 a.m. on January 1;

(m) Any other noise resulting from activities of a temporary duration permitted by law and for which a permit has been granted by the city of Bloomington in accordance with Section 14.09.050. Regulation of noises emanating from operations under permit shall be according to the conditions and limits stated on the permit and contained in Section 14.09.050.

SECTION 7. The provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.070 *Special Permits* shall be renumbered as Section 14.09.050 and shall be amended to read as follows:

> Applications for a permit for relief from the regulations contained in this chapter shall be made in writing to the mayor or his or her duly authorized representative. Any permit granted by the mayor or duly authorized representative must be in writing and shall contain all conditions upon which said permit shall be effective. The mayor, or duly authorized representative may prescribe any reasonable conditions or requirements he or she deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

SECTION 8. The provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.080 *Other noises prohibited – Standards for unnecessary noise* shall be deleted.

SECTION 9. The provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.090 *Enforcement* shall be renumbered as Section 14.09.060 and shall be amended to read as follows:

> (a) This chapter shall be enforced by the mayor, or his or her duly authorized representative, the Bloomington Police Department and/or civil servants, appointed with the approval of the common council.
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> (b) Each person charged with enforcement of this chapter shall have the power and authority to issue all orders and give notice of violations as are designated under this chapter. Such person, or persons, shall keep complete and accurate records. Non-police officers, who seek to enforce the provisions of this chapter, may not stop moving vehicles.

SECTION 10. The provisions contained in Chapter 14.09 of the Bloomington Municipal Code, Section 14.09.100 *Violations, penalties and appeals* shall be renumbered as Section 14.09.070 and shall be amended to read as follows:

> (a) Any person charged with violating the provisions of this chapter may, in the discretion of the enforcement officer, be issued an official warning. If an official warning is issued it shall be considered as affording the violator one opportunity to comply with this chapter's provisions.
>
> (b) Any person violating any of the provisions of this chapter, shall, upon a written finding of violation signed by the enforcement officer, be subject to an initial penalty of fifty dollars. Each day such violation is committed or permitted to continue shall constitute a separate offense. A second violation in any twelve month period is subject to a fine or penalty of one hundred dollars and subsequent violations within a twelve month period are subject to a fine or penalty of five hundred dollars.
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> (c) Upon written findings of a violation by the same person for the same offense three times within a consecutive twelve-month period, when such noise is created by the same noise emitter or same type of noise emitter, the noise creating device may be ordered by the enforcement officer to cease being used or operated until it can be brought into compliance with this chapter.
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> (d) Any person issued a written notice of violation of this chapter shall pay the total amount of the penalty to the City of Bloomington within seven days of such notice, unless such notice is appealed in conformity with Section 14.09.070(e).
>
> (e) All appeals from written finding of the enforcement officer must be taken, within seven days, to the Board of Public Works.
>
> (f) All appeals from written findings of the Board of Public Works shall be made to courts of competent jurisdiction within seven days.
>
> (g) Upon failure to appeal an adverse finding or failure to comply with a written order or assessed penalty, the city Legal Department shall be empowered to take all appropriate action necessary to enforce the written findings of the enforcement officer or of the Board of Public Works.

SECTION 11. The current Section 14.09.110 *Severability* shall be deleted .

SECTION 12. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 13. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, approval of the Mayor, and publication in accordance with State law.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 1st day of August, 2007.

~~DAVE ROLLO, President~~
Bloomington Common Council
STEPHEN VOLAN, Vice President

ATTEST:

Regina Moore
REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 2nd day of August, 2007.

Regina Moore
REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 2nd day of AUGUST, 2007.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance updates the City of Bloomington's Noise Control provisions contained in the Bloomington Municipal Code. In brief, the amendments:

- Eliminate the complicated sound pressure level limits and measurements found in the current code and introduce a "reasonable person with ordinary sensitivity" standard to provide notice to persons of what constitutes a violation;
- Consolidate all prohibited noises into just one section, as opposed to two, and craft provisions that clearly address contemporary concerns, including noise from vehicles;
- Modify existing exemptions, in part, by setting a predictable time for loud construction activities to begin each morning at 6:00 a.m. (rather than at sunrise) and adds new exemptions that cover activities, which are common, necessary or specifically allowed by law;
- Modify the special permit section, resulting in only one class of special permits issued by the Mayor or his representative, which should not significantly impact or change current practices; and
- Lastly, escalate fines from $50 for the first offense, $100 for the second offense, and $500 for the third offense committed within 12 months and direct appeals to the Board of Public Works.

Signed copies to:
legal (10)
controller
Board Public Works
Board Public Safety
Police
CA/CA (3)
clerk
file
BMC (2)
H-T publication