

ORDINANCE NO. _____

AN ORDINANCE ADDING CHAPTER 5.08, NOISE, TO TITLE 5, OFFENSES, OF THE MUNICIPAL ORDINANCES OF THE CITY OF VALLEY SPRINGS, MINNEHAHA COUNTY, SOUTH DAKOTA.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF VALLEY SPRINGS, MINNEHAHA COUNTY, SOUTH DAKOTA:

Section 1. That Chapter 5.08, Noise, of the Valley Springs Municipal Ordinances is hereby added to read as follows:

CHAPTER 5.08 – NOISE

5.0801 Definitions. For the purpose of this chapter, certain words and phrases used herein are defined as follows:

Daytime means 6:00 a.m. to 10:00 p.m. the same day.

District means a part, zone, or geographic area of the City within which certain zoning or development regulations apply.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which necessitates immediate action. Economic loss shall not be the sole determining factor in the determination of an emergency. It shall be the burden of an alleged violator to prove an "emergency."

Emergency work means any work made necessary to restore property to a safe condition following an emergency, or to protect property threatened by an imminent emergency, to the extent such work is necessary to protect persons or property from exposure to imminent danger or damage.

Nighttime means 10:00 p.m. to 6:00 a.m. the following day.

Noise means any sound which disturbs humans or other animals, or which causes or tends to cause an adverse psychological or physiological effect on humans or other animals.

Noise disturbance means any sound which:

1. Disturbs a reasonable person of normal sensitivities; or
2. Is plainly audible as defined in this section.

Person means any person, person's firm, association, copartnership, joint venture, corporation, or any entity public or private in nature.

Plainly audible means any sound or noise produced by any source, or reproduced by a radio, tape player, television, CD player, electronic audio equipment, musical instrument, sound amplifier or other mechanical or electronic soundmaking device, or nonamplified human voice that can be clearly heard by a person using his/her normal hearing faculties.

Property boundary means any imaginary line exterior to any enclosed structure, at the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person.

Public right-of-way means any street, avenue, boulevard, sidewalk, bike path or alley, or similar place normally accessible to the public which is owned or controlled by a governmental entity.

Reasonable time for a radio, music or sound player or other mechanical soundmaking device or instrument within a motor vehicle is instantly. Otherwise, absent special circumstances, "reasonable time" is 15 minutes in the case of nonvehicular sound emitters and two calendar days for vehicular sound emitters.

Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Weekday means any day Monday through Friday.

5.0802 Prohibited acts.

- A. General prohibition. It shall be unlawful and a violation of this chapter to make, cause or allow the making of any sound that causes a noise disturbance, as defined in section 5.0801.
- B. Specific prohibitions. In addition to the general prohibitions set out in subsection (A), and unless otherwise exempted by this chapter, the following specific acts, or the causing or permitting thereof, are hereby regulated as follows:
 1. Radios, television sets, musical instruments and similar devices.
 - a. Using, operating or permitting the use or operation of any radio receiving set, musical instrument, television, phonograph, drum or other machine or device for the production or reproduction of sound, except as provided for in subsection (B)(2) of this section, in such a manner as to cause a noise disturbance.
 - b. The operating of any such device between the hours of 10:00 p.m. and 6:00 a.m. the following day in such a manner as to be plainly audible at the property boundary of the source or plainly audible at 50 feet from such device when operated within a vehicle parked on a public right-of-way or plainly audible at 100 feet from such device when operated within a moving vehicle.
 2. Loudspeakers and public address systems.
 - a. No person shall operate, or permit the operation of, any loudspeaker, public address system or similar device, for any commercial purpose:

- i. Which produces, reproduces or amplifies sound in such a manner as to create a noise disturbance; or
 - ii. During nighttime hours on a public right-of-way.
 - b. No person shall operate, or permit the operation of, any loudspeaker, public address system or similar device, for any noncommercial purpose, except those used for emergency systems or devices, during nighttime hours in such a manner as to create a noise disturbance.
 3. Defect in vehicle. Operating or permitting to be operated or used any truck, automobile, motorcycle, or other motor vehicle which, by virtue of disrepair or manner of operation, causes a noise disturbance
 4. Animals. No person shall own, possess or harbor an animal or bird that howls, barks, meows, squawks or makes other sounds that:
 - a. Create a noise disturbance across a residential real property boundary;
 - b. Are of frequent or continued duration for ten or more consecutive minutes; or
 - c. Are intermittent for a period of 30 or more minutes.
 5. Standing motor vehicles. The operating or causing or permitting to be operated any motor vehicle or any auxiliary equipment attached thereto in such a manner as to cause a noise disturbance for a consecutive period longer than 15 minutes during which such vehicle is stationary in a residential zoning district.
 6. Recreational vehicles and snowmobiles. Operating a recreational vehicle or snowmobile in a manner which causes a noise disturbance.
- C. Exemptions. The following uses and activities shall be exempt from the sound level regulations:
1. Nonamplified human voice, except yelling, shouting, whistling, hooting, or generally creating a racket such that it creates a noise disturbance during the nighttime hours in a residential area in other than time of emergency.
 2. Sounds resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency.
 3. Sounds resulting from emergency work as defined in section 5.0801.
 4. Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations and air traffic control instruction used pursuant to and within the duly adopted federal air regulations; and 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.

5. All sounds coming from the normal operations of interstate motor and rail carriers, to the extent that local regulation of sound levels of such vehicles has been preempted by the Noise Control Act of 1972 (42 U.S.C. § 4901 et seq.) or other applicable federal laws or regulations.
6. School outdoor concerts and music activities including marching band activities, sporting activities with musical components, art festivals, and student fundraisers.
7. Religious organizations conducting worship services outdoors with musical components.
8. The City of Valley Springs, including, but not limited to, parks and recreation unit sponsored activities with musical components.
9. Permits issued by the City.
10. Any nonamplified noise generated by noncommercial public speaking activities conducted on any public property or public right-of-way pursuant to legal authority.
11. Sounds produced at organized sporting events, by fireworks and by permitted parades on public property or public right-of-way.

5.0803 Special permits.

A. Permit process.

1. Applications for a special permit for relief from the noise restrictions in this chapter may be made in writing to the Finance Officer.
2. The permit application shall include the name, address and telephone number of the permit applicant; the date, hours and location for which the permit is requested; and the nature of the event or activity. The application must be submitted at least ten days in advance of the event, not including holidays and weekends.
3. Payment of a fee of \$50.00.
4. Any permit granted must be in writing and shall contain all conditions upon which the permit shall be effective.
5. The Finance Officer may prescribe any reasonable conditions or requirements he/she deems necessary to minimize noise disturbances upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound-attenuating devices.
6. The permit shall be posted at the activity.

B. Permits may be granted under the following conditions:

1. Only six functions requiring a special permit may be held on any particular property per calendar year.
 2. The permit shall be limited to a single day.
 3. Permits shall be issued only for events occurring on Friday, Saturday, or a federally recognized holiday, and shall be effective only between the hours of 6:00 a.m. and 12:00 a.m. (midnight).
 4. No permit shall be issued to any applicant or any activity convicted of a violation of this chapter within the same calendar year.
- C. Upon receipt of a properly executed and signed application, the City of Valley Springs may issue a special noise permit to the applicant, which permit shall exempt the premises specified in the permit from the provisions of this chapter for the date specified in the permit, except that sound emitted from the premises shall in no way be plainly audible 1,000 feet from the property boundary.

5.0804 Measurement or assessment of sound.

- A. Any police officer or other official designated by the City Council who hears a noise or sound that is plainly audible, as defined in section 5.0801, in violation of this chapter, shall assess the noise or sound according to the following standards:
1. The primary means of detection shall be by means of the official's normal hearing faculties, so long as the official's hearing is not enhanced by any mechanical device, such as a hearing aid.
 2. The official must have a direct line of sight and hearing to the real property of the source of the sound or noise so that the official can readily identify the offending source of the sound or noise and the distance involved. If the official is unable to have a direct line of sight and hearing to the real property of the source of the sound or noise, then the official shall confirm the source of the sound or noise by approaching the suspected real property source of the sound or noise until the official is able to obtain a direct line of sight and hearing, and identify the identical or same sound or noise that was heard at the place of original assessment of the sound or noise.
 3. The official need not determine the particular words or phrases being said or produced or the name of any song or artist producing the noise or sound. The detection of a rhythmic bass reverberating type of noise or sound is sufficient to constitute a plainly audible noise or sound.

5.0805 Violation procedures.

- A. Violation of sound level limits.
1. Warnings:
 - a. When a designated official of the City determines that there is a violation of section 5.0802, the official shall issue a written warning to the person or

persons responsible for the sound. The warning shall advise the person of the violation, and of the possible penalty if the person fails to eliminate the sound or reduce the sound so that it is within permitted limits.

- b. The person or persons receiving the warning shall have a reasonable time, as defined in section 5.0801, to comply with the warning.
- c. For the purposes of this section, it is sufficient warning for all prohibited sounds if the person or persons responsible for any succeeding sounds are warned of, or cited for, one or more offending sounds of the same type in the same calendar year. In the situation of a business with current ownership less than one year, current ownership would not be responsible for violations prior to ownership of the business.

2. Citation.

- a. If the sound is not eliminated or is not reduced to allowable limits within a reasonable time after the warning, or if the noise or sound is abated after warning and then reoccurs, the person so warned and not complying shall be cited for a violation of this chapter.

B. Other limits; complaint procedure.

- 1. Any complaint regarding a sound or noise disturbance based solely on its disturbing a reasonable person of normal sensitivities must be filed by a person who is disturbed by the sound or noise. The burden of proof of this complaint will be on the complainant if the complaint results in a hearing before a judge. The complaint may be filed at the time of the disturbance or within a reasonable period of time after the fact.
- 2. When a complaint has been received, a designated official shall investigate the charges. If the official finds probable cause to believe the owner/operator is in violation of this chapter, the official shall issue a warning to cease and desist the violation.
- 3. If the owner/operator does not take corrective action within a reasonable time as defined in section 5.0801, or if the noise or sound is abated after warning and then reoccurs, the official may issue a citation or file a sworn complaint with the City and/or the police department. For purposes of section 5.0802 (B)(4) (animal noises), the noise will be considered to be unabated, or abated and reoccurring, if the official hears the same noise more than ten minutes after issuing the warning; and the official may then issue a citation based on this violation.

C. Joint and several responsibility. The owner, tenant or lessee of property, or a manager, overseer or agent, or any other person lawfully entitled to possess the property from which the offending sound is emitted at the time the offending sound is emitted, shall be responsible for compliance with this chapter. It shall not be a lawful defense to assert that some other person caused the sound. The lawful possessor or operator of the premises shall be responsible for operating or maintaining the premises in compliance with this chapter and shall be punished whether or not the person actually causing the sound is also punished.

- D. Any person who violates any provision of this ordinance shall be subject to a fine for each offense of one hundred twenty-five dollars (\$125.00) plus court costs, and each subsequent violation in the same calendar year shall result in an increase in the fine of twenty-five dollars (\$25.00) per subsequent violation (i.e. one hundred twenty-five dollars [\$125.00] for the first offense, one hundred fifty dollars [\$150.00] for the second offense, one hundred seventy-five dollars [\$175.00] for the third offense, etc. plus court costs). If the violation is of a continuing nature, each day during which it occurs shall constitute an additional, separate, and distinct offense.

Adopted this _____ day of _____, 2009.

Signed:
Mayor, City of Valley Springs

ATTEST:

Sandy Severtson
Finance Officer, City of Valley Springs

Seal

First Reading: _____
Second Reading & Adoption: _____
Publication: _____
Effective Date: _____