

CITY COUNCIL
CITY OF WOODLAND
MEETING OF JULY 14, 2014

Agenda Item 6. A.

New Business

TO: Honorable Mayor and Members of the City Council

FROM: Kathyne McCullum, City Clerk

SUBJECT: Request from Richard Henry, 17960 Shavers Lane, regarding the City of Woodland Noise Ordinance Section 455 and Nuisance Ordinance Section 415.

Background

Mr. Henry will be attending the July 14 meeting to make a request to the City Council regarding exceptions to the City's Noise Ordinance Section 455 and Nuisance Ordinance Section 415. Sections 455 and 415 of the City's Code of Ordinances relating to noise and nuisances are attached for Council information.

SECTION 455 NOISE CONTROL

455.01 GENERAL NOISE STANDARDS

Subd. 1. Incorporation by Reference. The MPCA Noise Rule, Chapter 7010.010 through 7010.008, and all amendments thereof and supplements thereto are hereby referred to, adopted, incorporated by reference, and made a part of this Section 455. A current copy shall be available for public inspection through the City Clerk's Office.

Subd. 2. Definitions. Except as provided in this Section, words or phrases used in this Section 455 and defined in the rules of the Minnesota Pollution Control "Agency Noise Section, Chapter 7010, shall have the meanings given in those rules.

- (a) A-Weighted. A specific weighting of the sound pressure level for the purpose of determining the human response to sound. The specific weighting and characteristics and tolerances are those given in American National Standards Institute § 1.4-1983, Section 5.1.
- (b) Cut-Out or By-Pass. Mechanism which varies the exhaust system gas flow so as to discharge the exhaust gas and acoustic energy to the atmosphere without passing through the entire length of the system including all exhaust system sound attenuation components.
- (c) dB(A). A unit of sound level expressed in decibels (dB) and A-weighted.
- (d) Exhaust System. Combination of components which provides an enclosed flow of exhaust gas from engine parts to the atmosphere.
- (e) L10. The sound level, expressed in dB(A) which is exceeded 10% of the time for a one-hour period, as measured by test procedures approved by the Director of the MPCA.
- (f) L50. The sound level, expressed in dB(A) which is exceeded 50% of the time for a one-hour period, as measured by test procedures approved by the Director of the MPCA.
- (g) MPCA. Minnesota Pollution Control Agency
- (h) Noise Control Officer. The Noise Control Officer shall be the person appointed as such by the Woodland City Council.

Subd. 3. Maximum Noise Levels by Receiving Land Use Districts. No person shall operate or cause to be operated any source of noise in such a manner as to create a noise level outdoors, as measured from the property line, exceeding the dB(A) limits set forth in the following Table:

<u>DAY (7 A.M.-10 P.M.)</u>		<u>NIGHT (10 P.M. - 7 A.M.)</u>	
<u>Sound Level</u>	<u>Maximum</u>	<u>Sound Level</u>	<u>Maximum</u>
L10	65 dB(A)	L10	55 dB(A)
L50	60 dB(A)	L50	50 dB(A)

455.02 Exemptions. The levels prescribed in the Table in Section 455.01 above do not apply to noise originating on public streets and alleys, but such noise shall be subject to other ordinances

455.03 Noises Prohibited.

Subd. 1. General Prohibition. No person shall make or cause to be made any distinctly and loudly audible noise that unreasonably annoys, disturbs, injures, or endangers the comfort, repose, health, peace, safety, or welfare of any person or precludes their enjoyment of property or affects their property's value. This general prohibition is not limited by the specific restrictions of the following paragraphs.

Subd. 2. Home, Audible and Signaling Devices, Etc. No person shall sound any signaling device on any vehicle (i) except as a warning of danger, or (ii) in violation of Minn. Stat. § 169.68.

Subd. 3. Engine Exhaust. No person shall discharge the exhaust or permit the discharge of the exhaust of any steam engine, stationary internal combustion engine, motor boat, motor vehicle, motorcycle, all terrain vehicle, snowmobile or any recreational device except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws, regulations and this Section 455.

No exhaust system on any engine shall be modified, altered, or repaired in any manner, including the use of a muffler cut-out or by-pass, that shall amplify or otherwise increase noise above that emitted by the device as originally equipped.

Subd. 4. Radios, Phonographs, Televisions, Paging Systems, Etc. No person shall use or operate or permit the use or operation of any radio receiving set, musical instrument, phonograph, television, paging system, machine or other device for production or reproduction of sound in a distinctly and loudly audible manner so as to disturb the peace, quiet, and comfort of any person nearby. Operation of any such device between the hours of 10 P.M. and 7 A.M. in such a manner as to be plainly audible at the property line of the structure or building in which it is located, or at a distance of 50 feet if the source is located outside a structure or building, shall be prima facie evidence of violations of this subdivision.

Subd. 5. Social Gatherings. No person shall participate in any party or other gathering of people giving rise to noise which disturbs the peace, quiet or repose of the occupants of adjoining or other property. When a police officer determines that a gathering is creating such noise disturbance, the officer shall order all persons present, other than the owner or tenant of the premises where the disturbance is occurring, to disperse immediately. No person shall refuse to leave after being ordered by a police officer to do so. Every owner or tenant of such premises who has knowledge of the disturbance shall cooperate with police officers and shall make every reasonable effort to see that the disturbance is abated.

A violation of this subdivision shall be deemed to be the act of the owner of the residential dwelling unit wherein it occurs as well as the persons on the premises who violate the subdivision except that the owner of the dwelling unit occupied by other shall be liable only for those violations occurring after a written notice of the violation of this subdivision shall have been received.

Subd. 6. Loudspeakers, Amplifiers for Advertising, Etc. No person shall operate or permit the use or operation of any loudspeaker, sound amplifier, or other device for the production or reproduction of sound on a street or other public place for the purpose of commercial advertising or attracting the attention of the public for any purpose whatsoever.

Subd. 7. Human Noise. No person shall engage in yelling, shouting, screaming, whistling, or singing at any time or place so as to annoy or disturb the quiet, comfort or repose of any person in any dwelling, in or on any residential property.

Subd. 8. Animal Noises. It shall be unlawful for any owner to fail to exercise proper care and control over his or her animals to prevent them from engaging in excessive noise such as to bark excessively, continuously or untimely. Failure on the part of the owner or custodian to prevent his or her animals from engaging in excessive noise shall subject the owner or custodian to the penalty hereinafter provided.

The phrase "to bark excessively, continuously, or untimely" includes, but is not limited to, the creation of any noise by any dog which can be heard by any person, including a law enforcement officer or animal control officer, from a location outside of the building or premises where the dog is being kept and which noise occurs repeatedly over at least a five minute period of time with one minute or less lapse of time between each animal noise during the five minute period.

455.04 Hourly Restriction For Certain Operations

Subd. 1. Domestic Power Equipment. No person shall operate a garden or lawn tractor, power lawn mower, power hedge clipper, chain saw, mulcher, garden tiller, edger, power device for bug eradication, drill, or other similar domestic power maintenance equipment except between the hours of 7 A.M. and 8 P.M. on any week day or between the hours of 9 A.M. and 6 P.M. on weekends. Snow removal equipment is exempt from this provision.

Subd. 2. Construction Activities. No person shall engage in or permit construction activities involving the use of any electric, diesel, or gas powered machine or other power equipment except between the hours of 7 A.M. and 6 P.M. week days or between the hours of 9 A.M. and 6 P.M. any weekends.

455.05 Exception For Emergency Work. Noise created exclusively in the performance of emergency work preserve the public health, safety or welfare, or in the performance of emergency work necessary to restore public service or eliminate a public hazard shall be exempt from the provisions of this Section for a period not to exceed 48 hours after the work is commenced. Persons responsible for such work shall inform the Noise Control Officer of the need to initiate such work or, if the work is commenced during non-business hours of the City, at the beginning of business hours of the first day thereafter. Any person responsible for such emergency work shall take all reasonable actions to minimize the amount of noise and the duration thereof.

455.06 Portable And Stationary Power Generators.

Subd. 1. Noise from public and private portable and stationary power generators and equipment used during power outages or other emergencies shall be exempt from the restrictions under this subsection.

455.07 Powers And Duties of Noise Control Officer.

Subd. 1. Administration Officer. The noise control program established by this Section 455 shall be administered by the Police, Noise Control Officer, Building Inspector, Zoning Coordinator and City Clerk.

Subd. 2. Noise Impact Statements. The Noise Control Officer may require any person applying to the City for a change in zoning classification, permit, license for any structure, operation, process, installation, or alteration or project that may be considered a potential noise source to submit a noise impact statement on a form prescribed by the officer. Each such statement shall be reviewed to ascertain whether the granting of such change would result in the violation of any provision of this Section. Reviews of noise impact statements shall be made by the Zoning Coordinator, and Planning Commission (if appropriate), and recommendations shall be made to the City Council.

Subd. 3. Other Powers and Duties. The Noise Control Officer shall exercise such other powers and perform such other duties as are reasonable and necessary to enforce the provisions of this chapter.

455.08 Enforcement and Penalties.

Subd. 1. When the Noise Control Officer, after appropriate testing has been done, determines that a noise exceeds the maximum sound level permitted under this Section or otherwise constitutes a nuisance, the Noise Control Officer shall give written notice of the violation of the owner or occupant of the premises where the noise originates, and order such persons to correct or remove each specified violations within such reasonable time as is prescribed in the notice.

In all other cases, the Noise Control Officer or a City law enforcement officer may demand immediate termination of the excessive noise. Failure to adhere to such demand shall subject the violator to appropriate criminal enforcement of such violation.

Subd. 2. Penalties. Any person violating this Section shall be guilty of a misdemeanor and in addition shall be subject to injunctive enforcement which the City may pursue through a court of competent jurisdiction or state administrative agency as may be appropriate. Each day that a violation continues shall constitute a separate violation.

SECTION 415 NUISANCES

415.04 Public Nuisances Affecting Peace and Safety. The following are declared to be nuisances affecting public peace and safety and shall be enforced by the police department and, or the zoning coordinator:

- (a) Construction activity, as defined in Section 415.01, Subd. 2, and commercial property maintenance activity as defined in Section 415.01, Subd. 3, at any time other than the hours of 7:00 a.m. to 6:00 p.m. on weekdays and 9:00 a.m. to 6:00 p.m. on Saturdays and no such activity is permitted on Sundays or on the following public holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Noise from equipment used during the removal of snow and generators and equipment used during power outages or other emergencies shall be exempt from the restrictions under this subsection.
- (b) Use of any public or private street or easement for fishing.
- (c) All wires and limbs of trees which are so close to the surface of a sidewalk or street as to constitute a danger to pedestrians or vehicles.
- (d) All unnecessary noises and annoying vibrations.
- (e) Obstructions and excavations affecting the ordinary use by the public of streets, alleys, sidewalks, or public grounds except under such conditions as are permitted by this Code or other applicable law.
- (f) Radio aerials or television antennae erected or maintained in a dangerous manner.
- (g) Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk which causes large crowds of people to gather, obstructing traffic and the free use of the street or sidewalk.
- (h) All hanging signs, awnings and other similar structures over streets and sidewalks, or so situated so as to endanger public safety, or not constructed and maintained as required by this Code.
- (i) Any barbed wire fence.
- (j) All dangerous, unguarded machinery in any public place, or so situated or operated on private property as to attract the public.
- (k) Wastewater cast upon or permitted to flow upon streets or other public property.
- (l) Accumulations in the open of discarded or disused machinery, household furniture and appliances, automobile bodies or other material, in a manner conducive to the harboring of rats, mice, snakes or vermin, or the rank growth of vegetation among the items so accumulated, or in a manner creating fire, health or safety hazards from such accumulation or which endangers the health, safety or welfare of the public or adversely affecting the peaceful enjoyment of neighboring properties.

- (m) The leaving of any unused ice box, refrigerator or other box or appliance, with a door on it which will effectively exclude air when shut, in any public place or on any private property.
- (n) Any well, hole or similar excavation which is left uncovered, or in such other condition as to constitute a hazard. Any construction in or adjacent to any street or sidewalk must be secured by a metal or wooden fence at least 4 ½ feet in height with posts no more than 6 feet apart, and must be illuminated with red or yellow lights from sunset to sunrise.
- (o) Obstruction to the free flow of water in a natural waterway or a public street drain, gutter or ditch with trash or other materials.
- (p) The placing or throwing on any street, sidewalk or other public property of any glass, tacks, nails, bottles or other substance which may injure any person or animal or damage any pneumatic tire when passing over such substance.
- (q) The depositing of garbage or refuse on a public right-of-way or on adjacent private property.
- (r) Any gathering of people from which noise emanates of a sufficient volume so as to disturb the peace, quiet or repose of persons residing in any residential area. No person may visit or remain in or about a residential dwelling wherein such a party or gathering is taking place, except persons who reside at that dwelling or have gone there for the sole purpose of abating the disturbance.
- (s) The parking, storing or keeping on any public or private property of any automobile or truck which is not currently licensed under the laws of the State or other state or federal law, excluding, however, vehicles kept within a fully enclosed garage or other building, and excluding impounded vehicles held by the City.
- (t) All other conditions or things which are likely to cause injury to the person or property of anyone.
- (u) Use or possession of fireworks by any person.
- (v) Aiding, abetting, facilitating or causing the escape of a person by force or fraud from the custody of a police officer.
- (w) Removal, damage or other interference with any barricade erected to protect any excavation, grading, paving, construction or other work.
- (x) The first 30 feet back from the public right-of-way upon any property which exists noxious weeds as defined in Minnesota Statutes, Section 18.77, Subd. 8 or poisonous vegetation such as poison ivy, or weeds, grass, brush or other plants which are a fire hazard or otherwise detrimental to the health or appearance of the neighborhood.
- (y) The length of grasses commonly used in lawn areas including blue grass, fescue or rye grass blends of similar grasses shall not exceed eighteen (18) inches in length, excluding grasses on steep slopes or adjoining ponds, wetlands and lakes.

415.05 Abatement. Whenever the officer charged with enforcement determines that a public nuisance is being maintained or exists on premises in the City, the officer may issue a citation for the violation and/or may give written notice to the owner or occupant of the premises of that fact

and order that the nuisance be terminated and abated. The notice may be served in person or by mail. If the premises are not occupied and the owner is unknown, the notice may be served by posting it on the premises. If such order is given, it will specify the steps to be taken to abate the nuisance and the time, within which the nuisance is to be abated. If the notice is not complied with within the time specified, the enforcing officer will report that fact to the Council. The Council may then, after notice to the owner or occupant and an opportunity to be heard, provide for abatement of the nuisance by the City. The notice will be served in the same manner as notice by the enforcing officer is served and will be given at least 10 days before the date stated in the notice when the Council will consider the matter. If notice is given by posting, at least 30 days must elapse between the day of posting and the hearing. The giving of such notice and the abatement of the nuisance by the owner will have no effect on the City's ability to prosecute the owner or occupant of the property for violation of this ordinance.

415.06 Recovery of Cost.

Subd.1. Personal liability. The owner of premises on which a nuisance has been abated by the City is personally liable for the cost to the City of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the Clerk or other official designated by the Council will prepare a bill for the cost and mail it to the owner. The bill will be immediately due and payable at the office of the Clerk.

Subd.2. Assessment. If the nuisance is a public health or safety hazard on private property, the accumulation of snow and ice on public sidewalks or paths, the growth of weeds on private property or outside the traveled portion of streets, or unsound or insect-infected trees, the Clerk will, on or before September 1 next following abatement of the nuisance, list the total unpaid charges along with all other such charges as well as other charges for current services to be assessed under Minnesota Statutes, Section 429.101 against each separate lot or parcel to which the charges are attributable. The Council may then assess the charges against such property under that statute and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year or in annual installments, not exceeding ten, as the Council may determine in each case.

