

## ORDINANCE NO. 295

### AN ORDINANCE ADDING NEW CHAPTER 50A, NOISE CONTROL, TO THE CODE OF ORDINANCES OF THE CITY OF ELY, IOWA

#### BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELY, IOWA:

**Section 1. Purpose.** The purpose of this Ordinance is to provide standards for noise control in the City of Ely.

**Section 2. Amendment.** The Code of Ordinances of the City of Ely, Iowa is amended as follows:

- 50A.01 Purpose
- 50A.02 Definitions
- 50A.03 Noise making prohibited
- 50A.04 Permitting use which causes noise prohibited
- 50A.05 Exemptions
- 50A.06 Motor vehicle noise levels
- 50A.07 Power equipment noise levels
- 50A.08 Compliance with zoning regulations
- 50A.09 Sound levels established
- 50A.10 Measuring noise levels
- 50A.11 Sounding of horn
- 50A.12 Recreational vehicle noise levels
- 50A.13 Variances
- 50A.14 Emission of noise declared to be a nuisance
- 50A.15 Impairment of action
- 50A.16 Disturbing the peace
- 50A.99 Penalty

#### § 93.01 PURPOSE.

The purpose of this chapter is to establish noise levels or standards for the protection of the public health and welfare. Any person causing noise in excess of the established level or standard is in violation of this chapter.

#### § 93.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Definitions of technical terms used in this chapter which are not defined in this section are contained in the American National Standards Institute (ANSI) publication SI.1.

**“A” SOUND LEVEL.** The total sound level of all noise as measured with a sound level meter using the “A” weighing network. The unit of measurement is the dB(A).

**AMBIENT NOISE.** The all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources near and far.

**DECIBEL.** A unit for measuring the volume of a sound, equal to the logarithm of the ratio of the intensity of the sound to the intensity of an arbitrarily chosen standard sound and is abbreviated **dB**.

**FLUCTUATING NOISE.** A noise whose sound pressure level varies significantly but does not equal the ambient environmental level more than once during the period of observation.

**IMPULSIVE NOISE.** Is characterized by brief excursions of sound pressure (acoustic impulses) which significantly exceed the ambient environmental sound pressure. The duration of a single impulse is usually less than one second.

**INTERMITTENT NOISE.** A noise whose sound pressure level equals the ambient environmental level two or more times during the period of observation. The period of time during which the level of the noise remains at an essentially constant value different from that of the ambient is on the order of one second or more.

**MOTOR VEHICLE.** Any passenger vehicle, truck, truck-trailer, trailer or semi-trailer or locomotive propelled or drawn by mechanical power.

**MOTORCYCLE.** Every motor vehicle having a seat or saddle for use by the rider and designed to travel with not more than three wheels in contact with the ground, including every motor scooter, motor-driven cycle and minibike, but excluding a tractor.

**NOISE.** Unwanted or annoying sound.

**SOUND LEVEL.** For airborne sound, is a weighted sound pressure level, obtained by the use of metering characteristics and the "A" weighting as specified in the reference standards. When the "A" weighting is employed, it must be indicated.

**SOUND PRESSURE LEVEL.** In decibels of a sound is 20 times the logarithm to the base ten of the ratio of the pressure of the sound to the reference sound pressure. Unless otherwise specified, the effective (rms) pressure is to be understood. The reference sound pressure is ten.

**STEADY NOISE.** A noise whose level remains essentially constant (i.e., fluctuations are negligibly small) during the period of observation.

**ZONING DISTRICT.** Those districts established by the zoning regulations of the city.

### **§ 93.03 NOISE MAKING PROHIBITED.**

(A) No person shall use or operate a radio, television, "boombox," stereo, MP3 player, speaker, compact disc player, sound amplifying device or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet and comfort of neighbors and passers-by, or is plainly audible at a distance of 50 feet from any person upon a public way. This division shall not apply to loudspeakers/public address systems, emergency signaling devices, car alarms and mobile food service trucks.

(B) No person shall operate a vehicle as defined in Iowa Code § 321.1 in a manner, which unreasonably disturbs the peace, quiet and comfort of neighbors and passerby, or is plainly audible at a distance of 300 feet from any person upon a public way.

(C) No person shall make or cause, permit or allow to be made, upon a public way, or in close proximity to a public way as to be distinctly and loudly audible upon the public way, any noise of any kind by crying, calling or shouting, or by means of any whistle, rattle, bell, hammer, drum, horn, other musical instrument, wind instrument, mechanical device or other similar device so as to destroy the peace of the neighborhood.

(D) No person shall permit any dog, cat, or other animal to bark, cry, screech, or otherwise emanate loud noises which disturb the quiet enjoyment of the neighboring premises by the occupants of those premises. Said noise violates this ordinance when the sound is allowed to continue for more than fifteen minutes and is not abated by the animal's owner or responsible caretaker, and when the owner or responsible caretaker has been notified of complaints of a violation of this ordinance received by the City on at least two prior occasions.

### **§ 93.04 PERMITTING USE WHICH CAUSES NOISE PROHIBITED.**

No person owning or in possession or control of any building or premises shall use the same, permit the use of the same or rent the same to be used for any business or employment or residential use, or for any purpose of pleasure or recreation, if the use shall, by its boisterous nature, disturb or destroy the peace of the neighborhood in which the building or premises is situated, or be dangerous or detrimental to health.

### **§ 93.05 EXEMPTIONS.**

Notwithstanding the term "noise making prohibited", as used in this chapter, the following emissions of sound shall be exempt from the provisions of this chapter and shall not constitute a prohibited emission of sound or noise:

(A) The emission of sound for the purpose of alerting persons to the existence of an emergency. This is to include the public address systems.

(B) The emission of sounds made or caused to be made by law enforcement officials in the performance of their official duties.

(C) The emission of sound in the performance of emergency work.

(D) Rail and air transportation and public mass transportation vehicles.

(E) The emission of sound from church bells, carillons, or chimes.

(F) The emission of sounds from a mobile food service truck between the hours of 9:00 a.m. to 9:00 p.m.

(G) The emission of sounds made by students, employees or the general public while in attendance at any school-sponsored event or city-approved event.

(H) The emission of sounds made by participants and observers of any parade that has been approved by the Council.

(I) The sound made or caused to be made by city, school or state-owned or hired equipment or facilities for the conduct of city, school or state operations.

(J) *Lawn and garden equipment.* The sound emitted by motor-powered muffler-equipped lawn and garden equipment operated between the hours of 7:00 a.m. and 9:00 p.m.

(K) *Chain saws.* The sound emitted by motor-powered tree-trimming equipment operated between the hours of 7:00 a.m. and 9:00 p.m.

(L) *Snow removal equipment.* The sound emitted by motor-powered, muffler-equipped snow removal equipment operated between the hours of 6:00 a.m. and 12:00 midnight and the sound emitted by city-owned or hired snow removal equipment regardless of hours of operation.

(M) *Alarms.* The sound emitted by the intentional sounding outdoors of any fire, burglar or civil defense alarm, siren, whistle or similar stationary emergency signaling device for emergency purpose or for the essential testing of such device. False alarms shall not be exempt under this chapter but shall be considered a nuisance under Chapter 50.

(N) *Construction noise.* The sound emitted by construction work (erection, demolition, excavation, drilling, sawing, hammering etc.) between the hours of 7:00 a.m. and 9:00 p.m., which is being performed pursuant to a proper and current building permit.

### § 93.06 MOTOR VEHICLE NOISE LEVELS.

(A) No person shall sell or offer for sale or use or operate a motor vehicle or motorcycle at any time or under any condition of grade, lead, acceleration or deceleration in a manner as to exceed the following noise limits for its category, based on a distance of not less than 25 feet from the centerline of travel or stationary location under test procedures established by § 50A.10 of this chapter.

<b><i>Motor Vehicle</i></b>	<b><i>Noise Limit</i></b>
Any motor vehicle with a manufacturer's GVW rating of 8,000 pounds or more and any combination of vehicles towed by the vehicles	86 dB(A)
Any motorcycle manufactured prior to January 1, 1978	82 dB(A)
Any motorcycle manufactured after January 1, 1978	78 dB(A)
Any other motor vehicle, including passenger cars and any combination of motor vehicles towed by the motor vehicles, including mobile food units which produce noise, such as music	76 dB(A)

(B) This section applies to the total noise from a vehicle or combination of vehicles and does not limit or preclude the enforcement of any other ordinance relating to motor vehicle noise control. For the purpose of this section, a motor truck, truck tractor or bus that is not equipped with an identification plate or marking bearing the manufacturer's name and manufacturer's gross vehicle weight rating shall be considered as having manufacturer's gross vehicle weight rating of 8,000 pounds or more if the unladen weight is more than 7,000 pounds. Any vehicle which is found not to be in conformity with this chapter and which is manufactured prior to January 1, 1978, may be exempted from the noise levels specified herein, provided a good and sufficient showing can be made that it is mechanically impossible without major construction to modify the equipment so as to be in compliance or that to comply would cause irreparable harm or injury to the engine of the vehicle.

#### **§ 93.07 POWER EQUIPMENT NOISE LEVELS.**

No person shall sell or lease or offer for sale or lease or use or operate any powered equipment or powered hand tool that produces a maximum noise level exceeding the following noise limits at a distance of 50 feet under test procedures established by § 50A.10:

<i>Type of Equipment</i>	<i>Noise Limit</i>
Agricultural tractors and equipment	86 dB(A)
Construction and industrial machinery, such as crawler-tractors, dozers, rotary drills and augers, loaders, power shovels, cranes, derricks, motor graders, paving machines, off-highway trucks, ditchers, trenchers, compactors, scrapers, wagons, pavement breakers, compressors and pneumatic powered equipment and the like, but not including pile drivers	86 dB(A)
Powered commercial equipment of 20 horsepower or less intended for infrequent use in a residential area, such as chainsaws, pavement breakers, log chippers, powered hand tools and the like	84 dB(A)
Powered equipment intended for repetitive use in residential areas, the equipment includes lawnmowers, small lawn and garden tools, riding tractors, snow removal equipment	80 dB(A)

#### **§ 93.08 COMPLIANCE WITH ZONING REGULATIONS.**

Any property use established in a zoning district as defined and designated under the zoning provisions of this code of ordinances shall be so operated as to comply with the performance standards governing noise set forth therein for the district in which the use is located.

#### **§ 93.09 SOUND LEVELS ESTABLISHED.**

At the boundary of any property, the maximum sound pressure level (dB) shall not exceed a reading of 65 dB(A) as measured under test procedures established by § 50A.10 of this chapter. The maximum sound pressure level readings shall be applied in every case at the boundaries of the property on which the activities measured take place. The maximum sound pressure levels established in this section to be applied to the boundaries of a lot shall not apply to construction sites. Construction site noise level is regulated by § 50A.10 of this chapter.

#### **§ 93.10 MEASURING NOISE LEVELS.**

Sound level measurement shall be made in accordance with the following procedures.

(A) All measurements shall be made with a sound level meter using the "A" weighted scale in accordance with the standards promulgated by the Society of Automotive Engineers and American National Standards Institute. Whenever possible, the enforcing officials shall determine the ambient noise level for the enforcement location. The ambient noise level for each enforcement location shall be established by obtaining the noise level reading for a period of five minutes before enforcement and a five-minute period immediately following enforcement with a reading to be taken every 30 seconds

during the five-minute period of time. The average of these readings will constitute the ambient noise level at that location during the enforcement period. The microphone shall be placed no nearer than three feet from any reflective surface and must be located a minimum of four feet above ground level.

(B) Impulsive type noises shall be subject to the performance standards hereinafter prescribed, provided that equipment suitable for noise measurement, as defined by this chapter, is used. Noises such as those of an irregular and intermittent nature shall be restricted as provided for hereinafter.

### **§ 93.11 SOUNDING OF HORN.**

No person shall sound any horn or audible signal device of any motor vehicle of any kind while not in motion, nor shall the horn or signal device be sounded under any circumstances except as required by law, nor shall it be sounded for any unnecessary or unreasonable period of time.

### **§ 93.12 RECREATIONAL VEHICLE NOISE LEVELS.**

No person shall sell or offer for sale or use or operate a motor-driven recreational or off-highway vehicle, including dune buggies, snowmobiles, all-terrain vehicles, go-carts and minibikes, that produces a maximum noise exceeding the following noise limit at a distance of 25 feet under test procedures established by § 50A.10.

<i><b>Recreational Vehicle</b></i>	<i><b>Noise Limit</b></i>
Any vehicle manufactured prior to January 1, 1978	82 dB(A)
For vehicles manufactured after January 1, 1978	78 dB(A)

### **§ 93.13 VARIANCES.**

(A) The Council may grant an individual variance from the limitations prescribed in this chapter whenever it is found, upon presentation of adequate proof, that compliance with any part of this chapter will result in an arbitrary and unreasonable taking of property or will impose an undue economic burden upon any lawful business, occupation or activity and that the granting of the variance will not result in a condition injurious to health or safety.

(B) Any variance, or renewal thereof, shall be granted within the requirements of division (A) above and for time periods and under conditions consistent with the reasons therefor and within the following limitations:

(1) If the variance is granted on the grounds that compliance with the particular requirement will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed a reasonable time as, in the view of the Council, is requisite for taking of the necessary measures. A variance granted on the ground specified in this division shall contain a timetable for taking of action in an expeditious manner and shall be conditioned on adherence to the timetable; or

(2) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in division (B)(1) above, it shall be for not more than one year.

(C) Any person seeking a variance shall do so by filing a petition for variance with the Council. The Council shall refer the petition to the pollution control enforcement official, who shall make recommendations thereon to the Council. The Council shall make the final determination as to the disposition thereof.

### **§ 93.14 EMISSION OF NOISE DECLARED TO BE A NUISANCE.**

Any emission of noise from any source in excess of the limitations established in or pursuant to this chapter is declared to be a public nuisance and may be subject to abatement procedures specified in Chapter 50 of this code of ordinances. The abatement may be in addition to the administrative

proceedings, fines and penalties provided in this chapter. The City Administrator is empowered to secure the institution of legal proceedings through the City Attorney for the abatement or prosecution of emissions of noise which cause injury, detriment, nuisance or annoyance to the public or endanger the health, comfort, safety or welfare of the public, or cause or have natural tendency to cause injury or damage to public or property. The legal proceedings may be in addition to the administrative proceedings, fines and penalties provided in this chapter.

#### **§ 93.15 IMPAIRMENT OF ACTION.**

Nothing in this chapter shall be construed to impair any cause of action or legal remedy therefor of any person or the public for injury or damage arising from the emission or release into the atmosphere or ground from any source whatever of noise in a place or manner or at levels so as to constitute a common law nuisance.

#### **§ 93.16 DISTURBING THE PEACE.**

Every person who unlawfully disturbs the public quiet of any street, alley, public square or any religious or public assembly or building, public or private or any neighborhood, private family or person within the city by giving false alarms of fire, by loud or unusual noise, by loud music, by squealing tires, by ringing bells, blowing horns or other instruments or by quarreling, assaulting, fighting or by any other device or means whatever is deemed to have committed a municipal infraction and in violation of this chapter.

#### **§ 93.99 PENALTY.**

Any person in violation of this chapter is subject to the standard penalty as established in this code of ordinances. A separate and distinct offense is committed on each day on which the person continues or permits any violation or failure to comply after notification thereof.

**Section 3. Repealer.** All other sections of this Ordinance in conflict with these provisions shall be repealed.

**Section 4. Severability.** If any section, provisions or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall have no effect on the validity of the Ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**Section 5. Effective Date.** This Ordinance shall be in full force and effect from and after its adoption and publication as provided by law.

  
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**Eldrew Miller, Mayor**

Attest:   
**Luanne Miller, City Clerk**

**1<sup>st</sup> Reading: November 1<sup>st</sup>, 2021**  
**2<sup>nd</sup> Reading: November 15<sup>th</sup>, 2021**  
**3<sup>rd</sup> Reading: December 6<sup>th</sup>, 2021**  
**ADOPTED: December 6<sup>th</sup>, 2021**