EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
An Ordinance Relating to Noise, Amending Ordinance 534-78 as Amended (Chapter 20.08 EMC) and Repealing Sections Under Section 16

07/27/16	Briefing	COUNCIL BILL #	CB1607-34
	Proposed Action	Originating Department	Human Resources
	Consent	Contact Person	Megan Munro
08/10/16	Action	Phone Number	425-257-8775
07/27/16	First Reading	FOR AGENDA OF	July 27, 2016
08/03/16	Second Reading		August 3, 2016
08/10/16	Third Reading		August 10, 2016
	Public Hearing		

Initialed by:
Department Head
CAA dl
Council President

Location	Preceding Action	Attachments	Department(s) Approval
		Ordinance	Legal, Police, Public Works, Code Enforcement, Planning, Human Resources

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

The purpose of this proposed ordinance is to amend chapter 20.08 EMC (Everett Municipal Code chapter relating to noise) with a comprehensive update to repeal outdated regulations and meet changes in state law, in the American National Standards Institute specifications, and in the Noise Control Districts in the City. It also clarifies noise control enforcement and variance procedures, including the authority of the noise control administrator, code enforcement, and police officers.

The current draft of this proposed ordinance has been approved by the Department of Ecology to ensure that it meets state law requirements. All changes to the proposed ordinance will need to be reviewed and approved by the Department of Ecology prior to enactment (approximately 60 days).

RECOMMENDATION (Exact action requested of Council):

Adopt an Ordinance Relating to Noise, Amending Ordinance 534-78 as Amended (Chapter 20.08 EMC) and Repealing Sections Under Section 16.

ORDINANCE No._____

AN ORDINANCE Relating to Noise, Amending Ordinance 534-78 as Amended (Chapter 20.08 EMC) and Repealing Sections Under Section 16.

Whereas, the City of Everett enacted a Noise Control Ordinance, Ordinance No. 534-78, on July 19, 1978 which established comprehensive noise control regulations in order to promote the use, value and enjoyment of property and environment by the citizens of Everett and the health, safety and welfare of the general public; and

Whereas, the City Council finds that a comprehensive update to the Noise Control Ordinance including repealing of outdated regulations is appropriate to reflect the present needs of the community, changes in the American National Standards Institute specifications, changes in state law, and updates to the Noise Control Districts; and

Whereas, updates to noise variance requirements and procedures will clarify the variance process and better serve variance applicants and the City; and

Whereas, updates clarifying the role of the noise control administrator, code enforcement, and the authority of police officers regarding noise control enforcement will benefit the general public by promoting such enforcement; and

Whereas, these proposed amendments promote the health, safety and welfare of the general public; and

Whereas, therefore, City Council finds it appropriate to update the Noise Control Ordinance as provided herein;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 1 of Ordinance No. 534-78 (EMC 20.08.010), which reads as follows:

Declaration of policy and Finding of Special Conditions.

a. DECLARATION OF POLICY. It is hereby declared to be the policy of the City of Everett to minimize the exposure of citizens to the harmful physiological and psychological effects of excessive noise. It is the express intent of the City Council to control the level of noise in a manner which promotes commerce; the use, value, and enjoyment of property; sleep and repose; and the quality of the environment.

b. FINDINGS OF SPECIAL CONDITONS. The problem of noise in the City has been studied since 1972 by the Safety Director of Everett. On the basis of these studies the City Council hereby finds that special conditions exist within the City of Everett which make necessary any and all differences between this ordinance and the regulations adopted by the Department of Ecology.

Be and the same is hereby amended to read as follows:

Declaration of policy—Findings of special conditions.

A. DECLARATION OF POLICY. It is hereby declared to be the policy of the c~~C~~ity ~~of Everett~~ to minimize the exposure of citizens to the harmful physiological and psychological effects of excessive noise. It is the express intent of the c~~C~~ity c~~C~~ouncil to control the level of noise and to promote and preserve the public health, safety, and welfare while affording protection to free speech activity as required by applicable constitutional law. It is the express intent of the c~~C~~ity c~~C~~ouncil to control the level of noise in a manner which promotes commerce; the use, value, and enjoyment of property; sleep and repose; ~~and~~ the quality of the environment; and which enables all residents of the city to peacefully coexist in a manner which is mutually respectful of the interests and rights of others.

B. FINDINGS OF SPECIAL CONDITONS. The problem of noise in the City has been studied since 1972 by the ~~Safety Director of Everett~~ city. On the basis of ~~these studies~~this experience and knowledge of conditions within the city, the c~~C~~ity c~~C~~ouncil finds that special conditions exist within the c~~C~~ity ~~of Everett~~ which makes necessary any and all differences between this ordinance and the regulations adopted by the Department of Ecology.

Section 2. Section 2 of Ordinance No. 534-78, as amended by Section 2 of Ordinance No. 690-80, as amended by Section 1 of Ordinance No. 1556-89 (EMC 20.08.020), which reads as follows:

Definitions.

All technical terminology used in this chapter not defined herein shall be interpreted in conformance with American National Standards Institute Specifications, Section 1.1-1960 and Section 1.4-1971. For purposes of this chapter, the words and phrases used herein shall have the meaning indicated below:

A. "Administrator" means the noise control administrator as established in Section 20.08.130.

B. "dB(A)" means a sound level, measured in decibels, using the A frequency-weighting network of a sound level meter.

C. "District" means the land use zones to which the provisions of this chapter are applied. For the purposes of this chapter the following noise control districts shall be established which include land use zones designated in the Everett zoning code as follows:

Noise Control District	Land Use Zones
1. District I	All residentially zoned districts including but not limited to R.S., R-1, R-2, R-3(A), R-4 and R-5.
2. District II	All business and commercially zoned districts including but not limited to B-1, B-2(A), B-2, B-2(B), B-3, C-1 and C-2.
3. District III	All agricultural and manufacturing zoned districts including but not limited to A, M-M and M-1, and all other nonresidential, nonbusiness and noncommercially zoned districts.

D. "Emergency work" means work made necessary to restore property to a safe condition following a public calamity, work required to protect persons or property from imminent exposure to danger, or work by private or public utilities for providing or restoring immediately necessary utility service.

E. "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the recommended maximum loaded weight of a combination vehicle.

F. "Gross vehicle weight rating" means the value specified by the manufacturer as the recommended maximum loaded weight of a single vehicle.

G. "Motorcycle" means any motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, except farm tractors and such vehicles powered by engines of less than five horsepower.

H. "Motor vehicle" means any vehicle which is self-propelled, used primarily for transporting persons or property upon public highways, and required to be licensed under RCW 46.16A.030. (Aircraft, watercraft, and vehicles used on rails or tracks are not motor vehicles as that term is used herein.)

I. "New motor vehicle" means a motor vehicle manufactured after December 31, 1976, the equitable or legal title of which has never been transferred to a person who, in good faith, purchases the new motor vehicle for purposes other than resale.

J. "Noise" means the intensity, duration and character of sounds from any and all sources.

K. "Off-highway vehicle" means any self-propelled motor driven vehicle not used primarily for transporting persons or property upon public highways nor required to be licensed under RCW 46.16A.030.

L. "Person" means any individual, firm, association, partnership, corporation or any other entity, public or private.

M. "Property boundary" means the survey line at ground surface which separates the real property owned, rented or leased by one or more other persons and its vertical extension.

N. "Public nuisance noise" means any sound which unreasonably either annoys, injures, interferes with or endangers the comfort, repose, health or safety of three or more persons residing within separate residences in the same community or neighborhood, although the extent of damage may be unequal.

O. "Receiving property" means real property within which sound originating from sources outside the property is received.

P. "Sound level" means a weighted sound pressure level obtained by the use of a sound level meter and weighted as specified in American National Standards Institute Specifications, Section 1.4-1971.

Q. "Sound level meter" means a sound-level measuring device, either Type I or Type II, as defined by American National Standards Institute Specifications, Section 1.4-1971.

R. "Watercraft" means any contrivance, excluding aircraft, used or capable of being used as a means of transportation or recreation on water.

S. "Weekend" means Saturday and Sunday or any legal holiday.

Be and the same is hereby amended to read as follows:

Definitions.

All technical terminology used in this ordinance ~~chapter~~ not defined herein shall be interpreted in conformance with American National Standards Institute Specifications~~, Section 1.1-1960 and~~ Section 1.4-~~1971~~2014 as it currently exists or is later amended. For purposes of this ~~chapter~~ordinance, the words and phrases used herein shall have the meaning indicated below:

A. "Administrator" means the noise control administrator as established in Section 20.08.130, or designee.

B. "dB(A)" means a sound level, measured in decibels, using the A frequency-weighting network of a sound level meter.

C. "District" means the land use zones to which the provisions of this ~~chapter~~ ordinance are applied. For the purposes of this ~~chapter~~ ordinance the following noise control districts shall be established which include land use zones designated in the Everett zoning code as follows:

Noise Control District	Land Use Zones
1. District I	All residentially zoned districts including but not limited to R.S., R-1, R-1A, R-2, R-2A, R-3~~(A)~~, R-3L, R-4 and R-5.
2. District II	All business and commercially zoned districts including but not limited to B-1~~, B-2(A)~~, B-2~~, B-2(B)~~, B-3, BMU, E1, E-1MUO, C-1, C-1R, ~~and~~ C-2 and C-2ES.
3. District III	All agricultural and manufacturing zoned districts including but not limited to A, M-M, ~~and~~ M-1, M-S, W-C and all other nonresidential, nonbusiness and noncommercially zoned districts.

For any land use zone not listed in subsection C of this section, the Administrator may determine that the zone is substantially similar to a zone listed in subsection C and may classify it similarly for purposes of this ordinance.

D. "Emergency work" means work made necessary to restore property to a safe condition following a public calamity, work required to protect persons or property from imminent exposure to danger, or work by private or public utilities for providing or restoring immediately necessary utility service.

~~E. "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the recommended maximum loaded weight of a combination vehicle.~~

~~F.~~E. "Gross vehicle weight rating" means the value specified by the manufacturer as the recommended maximum loaded weight of a single vehicle.

~~G.~~F. "Motorcycle" means any motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, except farm tractors and such vehicles powered by engines of less than five horsepower.

~~H.~~G. "Motor vehicle" means any vehicle which is self-propelled, used primarily for transporting persons or property upon public highways, and required to be licensed under RCW 46.16A.030. (Aircraft, watercraft, and vehicles used on rails or tracks are not motor vehicles as that term is used herein.)

~~I.~~H. "New motor vehicle" means a motor vehicle manufactured after December 31, 1976, the equitable or legal title of which has never been transferred to a person who, in good faith, purchases the new motor vehicle for purposes other than resale.

~~J.~~I. "Noise" means the intensity, duration and character of sounds from any and all sources.

~~K.~~J. "Off-highway vehicle" means any self-propelled motor driven vehicle not used primarily for transporting persons or property upon public highways nor required to be licensed under RCW 46.16A.030.

~~L.~~K. "Person" means any individual, firm, association, partnership, corporation or any other entity, public or private.

L. "Property boundary" means the survey line at ground surface which separates the real property owned, rented or leased by one or more other persons and its vertical extension.

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M. "Public Highway" means the entire width between the boundary lines of every way publicly maintained by the department of highways or any county or city when any part thereof is generally open to the use of the public for purposes of vehicular travel as a matter of right.

N. "Public nuisance noise" means any sound which ~~unreasonably either~~ annoys, injures, interferes with or endangers the comfort, repose, health or safety of ~~three or more persons residing within separate residences in the same community or neighborhood,~~an entire community or neighborhood although the extent of the damage may be unequal.

O. "Receiving property" means real property within which sound originating from sources outside the property boundary is received.

P. "Sound level" means a weighted sound pressure level obtained by the use of a sound level meter and weighted as specified in American National Standards Institute Specifications, Section 1.4-~~1971~~2014.

~~P.~~Q. "Sound Level Measurement Procedures" means standardized procedures for the measurement of sound levels of sources regulated by this ordinance and performed in accordance with the Washington State Department of Ecology rules WAC 173-58.

R. "Sound level meter" means a sound-level measuring device, either Type I or Type II, as defined by American National Standards Institute Specifications, Section 1.4-~~1971~~2014.

S. "Temporary Construction Site" means any location where site clearing, construction of plat improvements, or construction or remodeling of a structure, facility, improvement or other feature attached to the land occurs. This includes roadway, bikeway, trail, sidewalk or other similar construction, repair or improvement.

~~Q.~~T. "WAC" means the Washington Administrative Code as currently enacted or hereafter amended.

~~R.~~U. "Watercraft" means any contrivance, excluding aircraft, used or capable of being used as a means of transportation or recreation on water.

~~S.~~V. "Weekend" means Saturday and Sunday or any legal holiday observed by the State of Washington.

Section 3. Section 3(a) of Ordinance No. 534-78 (EMC 20.08.030), which reads as follows:

Environmental Sound Levels. UNLAWFUL SOUNDS. It is unlawful for any person to cause or permit noise to intrude into the property of another person which noise exceeds the maximum permissible noise levels set forth below.

Be and the same is hereby amended to read as follows:

~~Environmental Sound Levels. UNLAWFUL SOUNDS.~~Environmental sound—Unlawful sounds designated.

It is unlawful for any person to cause or permit noise to intrude into the real property of another person which noise exceeds the maximum permissible ~~noise~~ sound pressure levels set forth ~~below~~in this ordinance.

Section 4. Section 3(b) of Ordinance No. 534-78 (EMC 20.08.040), which reads as follows:

Environmental Sound Levels. MAXIMUM PERMISSIBLE NOISE LEVELS. For sound sources located within the City of Everett the maximum permissible noise levels are as follows:

District Sound Source	**District of Receiving Property Within the City of Everett**		
	I	**II**	**III**
I	55 dB(A)	57 dB(A)	60 dB(A)
II	57 dB(A)	60 dB(A)	65 dB(A)
III	60 dB(A)	65 dB(A)	70 dB(A)

Be and the same is hereby amended to read as follows:

~~Environmental Sound Levels. MAXIMUM PERMISSIBLE NOISE LEVELS.~~ Environmental sound—Maximum permissible levels.

For sound sources located within the City of Everett the maximum permissible noise levels are as follows:

District Sound Source	District of Receiving Property Within the City of Everett		
	I	II	III
I	55 dB(A)	57 dB(A)	60 dB(A)
II	57 dB(A)	60 dB(A)	65 dB(A)
III	60 dB(A)	65 dB(A)	70 dB(A)

Where a receiving property lies within more than one district, the most restrictive maximum permissible noise level shall apply to the receiving property.

Section 5. Section 3(c) of Ordinance No. 534-78 (EMC 20.08.050), which reads as follows:

Environmental Sound Levels. MODIFICATIONS TO MAXIMUM PERMISSIBLE NOISE LEVELS. The maximum permissible noise levels established by this section shall be modified, reduced or increased as follows:

1. Between the hours of 10:00 p.m. and 7:00 a.m. during weekdays, and between the hours of 10:00 p.m. and 9:00 a.m. on weekends, the levels established in Section 3(b) of this ordinance are reduced by 10 dB(A) where the receiving property lies within District I of the City of Everett.

2. At any hour of the day or night, for any source of sound which is of short duration, the levels established by this chapter are increased by: 5 dB(A) for a total of 15 minutes in any one-hour period; or 10 dB(A) for a total of 5 minutes in any one-hour period; or 15 dB(A) for a total of 1.5 minutes in any one-hour period.

3. This subsection shall be subject to amendment by the addition of a provision which establishes a correction factor for sources of sound which cannot accurately be measured on the "A" weighted scale. Said provision shall be added upon recommendation of the Administrator and approval of the City Council and State Department of Ecology at such time when the Administrator deems necessary and funding for equipment, personnel and other items necessary for the implementation of the provision are available.

Be and the same is hereby amended to read as follows:

~~Environmental Sound Levels. MODIFICATIONS TO MAXIMUM PERMISSIBLE NOISE LEVELS.~~ Environmental sound—Modifications to maximum permissible noise levels.

The maximum permissible ~~noise~~ sound levels established by this ~~section~~ ordinance shall be modified, reduced or increased as follows:

A. Between the hours of ~~10:00~~ten p.m. and ~~7:00~~seven a.m. during weekdays, and between the hours of ~~10:00~~ten p.m. and ~~9:00~~nine a.m. on weekends, the levels established in Section 3(b) of this ordinance are reduced by ~~10~~ ten dB(A) where the receiving property lies within District I of the City of Everett.

B. At any hour of the day or night, for any source of sound which is of short duration, the levels established by this ~~chapter~~ ordinance are increased by:

1. ~~5~~ Five dB(A) for a total of ~~15~~ fifteen minutes in any one-hour period;

or

2. ~~10~~ Ten dB(A) for a total of ~~5~~ five minutes in any one-hour period; or

~~B.~~ 3. ~~15~~ Fifteen dB(A) for a total of 1.5 minutes in any one-hour period.

~~C. This subsection shall be subject to amendment by the addition of a provision which establishes a correction factor for sources of sound which cannot accurately be measured on the "A" weighted scale. Said provision shall be added upon recommendation of the Administrator and approval of the City Council and State Department of Ecology at such time when the Administrator deems necessary and funding for equipment, personnel and other items necessary for the implementation of the provision are available.~~

Section 6. Section 4(a) of Ordinance No. 534-78 (EMC 20.08.060), which reads as follows:

Motor Vehicle Noise Levels. MAXIMUM PERMISSIBLE MOTOR VEHICLE NOISE LEVELS. It is unlawful for any person to operate any motor vehicle upon any public highway or any combination of such vehicles under any conditions of grade, load, acceleration, or deceleration in such a manner as to exceed the maximum permissible sound levels for the category of vehicle, as measured at a distance of fifty feet from the center of the lane of travel within the speed limits specified, under procedures established by the State Commission on equipment in WAC 204-56.

VEHICLE CATEGORY	35 MPH or Less	Over 35 MPH

VEHICLE CATEGORY	35 MPH or Less	Over 35 MPH
Motor vehicles over 10,000 pounds GVWR or GCWR	86 dB(A)	90 dB(A)
Motorcycles	80 dB(A)	84 dB(A)
All other motor vehicles	76 dB(A)	80 dB(A)

Be and the same is hereby amended to read as follows:

~~Motor Vehicle Noise Levels. MAXIMUM PERMISSIBLE MOTOR VEHICLE NOISE LEVELS.~~ Motor vehicle noise—Maximum permissible levels.

It is unlawful for any person to operate any motor vehicle upon any public highway or any combination of such vehicles under any conditions of grade, load, acceleration, or deceleration in such a manner as to exceed the maximum permissible sound levels for the category of vehicle, as measured at a distance of fifty feet from the center of the lane of travel within the speed limits specified, under procedures ~~established by the State Commission on equipment in WAC 204-56~~ set forth in chapter 173-62 WAC "Motor Vehicle Noise Performance Standards" including:~~.~~

~~VEHICLE CATEGORY~~Vehicle Category Type	~~35~~ 45 MPH or Less	Over ~~35~~ 45 MPH
Motor vehicles over 10,000 pounds GVWR ~~or GCWR~~	86 dB(A)	90 dB(A)
Motorcycles	~~80~~ 78 dB(A)	~~84~~ 82 dB(A)
All other motor vehicles	~~76~~ 72 dB(A)	~~80~~ 78 dB(A)

Section 7. Section 4(b) of Ordinance No. 534-78 (EMC 20.08.070), which reads as follows:

Motor Vehicle Noise Levels. MAXIMUM NOISE LEVELS FOR NEW MOTOR VEHICLES. It is unlawful for any person to sell or offer for sale a new motor vehicle, except an off-highway vehicle, which produces a maximum noise exceeding the following noise levels at a distance of fifty feet under acceleration test procedures established by the State Commission on equipment in WAC 204-56.

Vehicle Category	
Motorcycles manufactured after 1975	83 dB(A)
Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after 1975	86 dB(A)
Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after January 1, 1978	83 dB(A)
Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after January 1, 1982	80 dB(A)
All other motor vehicles	80 dB(A)

Be and the same is hereby amended to read as follows:

~~Motor Vehicle Noise Levels. MAXIMUM NOISE LEVELS FOR NEW MOTOR VEHICLES.~~ Motor vehicle noise—Maximum levels for new vehicles.

It is unlawful for any person to sell or offer for sale a new motor vehicle, except an off-highway vehicle, which produces a maximum noise exceeding the following noise levels at a distance of fifty feet under acceleration test procedures ~~established by the State Commission on equipment in WAC 204-56~~ set forth in Chapter 173-62 WAC.

~~**Vehicle Category**~~

~~Vehicle Category~~	
~~Motorcycles manufactured after 1975~~	~~83 dB(A)~~
~~Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after 1975~~	~~86 dB(A)~~
~~Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after January 1, 1978~~	~~83 dB(A)~~
~~Any motor vehicle over 10,000 pounds GVWR or GCWR manufactured after January 1, 1982~~	~~80 dB(A)~~
~~All other motor vehicles~~	~~80 dB(A)~~

Vehicle Category	Date of Manufacture	Maximum Sound
Any motor vehicle over 10,000 pounds GVWR excluding buses	Before January 1, 1978	86 dBA
Any motor vehicle over 10,000 pounds GVWR excluding buses	After January 1, 1978	83 dBA
Any motor vehicle over 10,000 pounds GVWR excluding buses	After January 1, 1982	80 dBA
All buses over 10,000 pounds GVWR	After January 1, 1980	85 dBA
All buses over 10,000 pounds GVWR	After January 1, 1983	83 dBA
All buses over 10,000 pounds GVWR	After January 1, 1986	80 dBA
Any motor vehicle 10,000 pounds GVWR or less	After January 1, 1976	80 dBA
Motorcycles	After January 1. 1976	83 dBA
Motorcycles	After January 1, 1986	80 dBA

Section 8. Section 4(c) of Ordinance No. 534-78 (EMC 20.08.080), which reads as follows:

Motor Vehicle Noise Levels. SPECIFIC PROHIBITIONS.

1. MUFFLERS. Every motor vehicle operated upon the public highways shall at all times be equipped with a muffler in good working order and constant operation.

2. TIRE NOISE. It is unlawful for any person to operate a motor vehicle in such a manner as to cause or allow to be emitted squealing, screeching or other such sound from the tires in contact with the ground because of rapid acceleration or excessive speed around corners or other such reason, provided that noise resulting from emergency braking to avoid imminent danger shall be exempt from this section.

3. ALTERATION OF MOTOR VEHICLES. It is unlawful for any person to change or modify any part of a motor vehicle or install any device thereon in any manner that permits sound to be emitted by the motor vehicle in excess of the limits prescribed in Section 4(a) and (b) of this chapter.

Be and the same is hereby amended to read as follows:

Motor Vehicle Noise Levels~~. SPECIFIC PROHIBITIONS~~—Specific Prohibitions.

A. ~~MUFFLERS~~Mufflers and Exhaust Systems. Every motor vehicle operated upon the public highways shall at all times be equipped with an exhaust system and a muffler in good working order and constant operation to prevent excessive or unusual noise.

B. ~~TIRE NOISE~~Tire Noise. It is unlawful for any person to operate a motor vehicle in such a manner as to cause or allow to be emitted squealing, screeching or other such ~~sound~~ noise from the tires in contact with the ground because of rapid acceleration or excessive speed around corners or other such reason, ~~provided~~ except that noise resulting from emergency braking to avoid imminent danger shall be exempt from this section.

C. ~~ALTERATION OF MOTOR VEHICLES~~Alteration of Motor Vehicles. It is unlawful for any person to change or modify any part of a motor vehicle or install any device thereon in any manner that permits sound to be emitted by the motor vehicle in excess of the limits prescribed in ~~Section 4(a) and (b)~~Sections 20.08.060 and 20.08.070 of this chapter.

D. Violation of this section is a misdemeanor.

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Section 9. Section 5 of Ordinance No. 534-78, as amended by Section 2 of Ordinance No. 690-80, as amended by Section 1 of Ordinance No. 1971-93, as amended by Section 11 of Ordinance 2394-99 (EMC 20.08.090), which reads as follows:

Public nuisance and disturbance noises.

A. Public Nuisance Noises. Pursuant to Section 20.08.200 of this chapter, the administrator may determine that a sound constitutes a public nuisance noise as defined herein. It is unlawful for any person to cause or allow to be emitted a noise which has been determined a public nuisance noise.

B. Public Disturbance Noises. It is unlawful for any person to cause, or for any person in possession of property to allow to originate from the property, sound that is a public disturbance. No sound source specifically exempted from a maximum permissible sound level by this chapter shall be a public nuisance noise or public disturbance noise insofar as the particular source is exempted. The following sources of sound shall be public disturbance noises and are also subject to regulation under the provisions of Sections 20.08.030 through 20.08.050:

1. The frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law;

2. The creation of frequent, repetitive or continuous noise in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine within District I so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property;

3. Yelling, shouting, hooting, whistling or singing on or near the public streets, particularly between the hours of eleven p.m. and seven a.m. or at any time and place so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property;

4. The use of a sound amplifier or other device capable of producing or reproducing amplified sound upon public streets for the purpose of commercial advertising or sales or for attracting the attention of the public to any vehicle, structure or property or the contents therein, except as permitted by law, and except that vendors whose sole method of selling is from a moving vehicle shall be exempt from this subsection;

5. The creation of frequent, repetitive or continuous sounds which emanate from any building, structure, apartment or condominium, which unreasonably interferes with the peace, comfort and repose of owners or

possessors of real property, such as sounds from musical instruments, audio sound systems, band sessions or social gatherings;

6. Sound from motor vehicle audio sound systems, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source, and if not operated upon the property of the operator;

7. Sound from audio equipment, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source, and if not operated upon the property of the operator; and

8. The foregoing provisions shall not apply to regularly scheduled events at parks, such as public address systems for baseball games or park concerts.

Be and the same is hereby amended to read as follows:

Public nuisance and disturbance noises.

A. Public Nuisance Noises. Pursuant to Section 20.08.200 of this chapter, the administrator may determine that a sound constitutes a public nuisance noise as defined herein. It is unlawful for any person to cause or allow to be emitted a noise which has been determined a public nuisance noise.

B. Public Disturbance Noises Originating from Real or Personal Property. ~~It is unlawful for any person to cause, or for any person in possession of property to allow to originate from the property, sound that is a public disturbance. No sound source specifically exempted from a maximum permissible sound level by this chapter shall be a public nuisance noise or public disturbance noise insofar as the particular source is exempted. The following sources of sound shall be public disturbance noises and are also subject to regulation under the provisions of Sections 20.08.030 through 20.08.050:~~ Unless specifically exempted, public disturbance noises emanating from real or personal property possessed or controlled by the person causing or permitting the public disturbance noise are prohibited at all times. These include but are not limited to the following sounds if the sound is plainly audible across a real property line or 50 feet from the source, whichever is less.

1. ~~The frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law;~~ The frequent, repetitive and/or continuous sounding of any horn, siren or alarm attached to a motor vehicle, except when used as a warning of danger or as specifically permitted or required by law.

2. ~~The creation of frequent, repetitive or continuous noise in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal-combustion engine within District I so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property;~~ The frequent, repetitive and/or continuous sounds in connection with the starting, operation, repair and/or testing of any motor vehicle, motorcycle, off-highway vehicle or internal-combustion engine.

~~3. Yelling, shouting, hooting, whistling or singing on or near the public streets, particularly between the hours of eleven p.m. and seven a.m. or at any time and place so as to unreasonably disturb or interfere with the peace, comfort and repose of owners or possessors of real property;~~

~~4. The use of a sound amplifier or other device capable of producing or reproducing amplified sound upon public streets for the purpose of commercial advertising or sales or for attracting the attention of the public to any vehicle, structure or property or the contents therein, except as permitted by law, and except that vendors whose sole method of selling is from a moving vehicle shall be exempt from this subsection;~~

~~5.~~3. ~~The creation of frequent, repetitive or continuous sounds which emanate from any building, structure, apartment or condominium, which unreasonably interferes with the peace, comfort and repose of owners or possessors of real property, such as sounds from musical instruments, audio sound systems, band sessions or social gatherings;~~ The creation of frequent, repetitive and/or continuous sounds which emanate from real property possessed or controlled by the person causing or permitting the sound, such as sounds from audio equipment, television, video equipment, musical instruments, band sessions and/or social gatherings.

~~6. Sound from motor vehicle audio sound systems, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source, and if not operated upon the property of the operator;~~

~~7. Sound from audio equipment, such as tape players, radios and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source, and if not operated upon the property of the operator; and~~

~~8. The foregoing provisions shall not apply to regularly scheduled events at parks, such as public address systems for baseball games or park concerts.~~

4. Violation of this section is a misdemeanor.

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C. Public Disturbance Noises Originating from Public Property. Unless specifically exempted, public disturbance noises originating from a person or personal property while on public property or a public right-of-way are prohibited at all times. In addition to public disturbance noises defined in subsection B herein, the following are public disturbance noises:

1. A person or performer creating a sound, whether amplified or unamplified, between the hours of ten p.m. and seven a.m. so as to be plainly audible across a real property boundary which is not the source of sound;

2. A person or performer creating a sound, whether amplified or unamplified, between the hours of seven a.m. and ten p.m. so as to be plainly audible 100 feet or more from the source of the sound;

3. The use of a sound amplifier or other device capable of producing or reproducing amplified sound upon public streets for the purpose of commercial advertising or sales or for attracting the attention of the public to any vehicle, structure or property or the contents therein, except that vendors whose sole method of selling is from a moving vehicle shall be exempt from this subsection;

4. Sound from the frequent, repetitive and/or continuous operating or playing of motor vehicle audio equipment, whether portable or stationary or mounted on or within a motor vehicle.

5. Violation of this section is a misdemeanor.

D. It is unlawful to intentionally fail to cease a public disturbance noise when directed to do so by a law enforcement officer. The content of the sound will not be considered in determining any violation of this section. Violation of this section is a misdemeanor.

Section 10. Section 6(a-b) of Ordinance No. 534-78, as amended by Sections 1-3 of Ordinance No. 564-78, as amended by Section 2 of Ordinance No. 1556-89, as amended by Section 2 of Ordinance 1971-93 (EMC 20.08.100), which reads as follows:

Noises exempt—At all times—Partially exempt noises.

A. The following noises are exempt from the provisions of this chapter at all times: provided, that nothing in these exemptions is intended to preclude the administrator from requiring installation of the best available noise abatement technology consistent with economic feasibility. The establishment of any such requirement shall be subject to the provisions of the Administrative Procedure Act, Chapter 34.04 RCW:

1. Noise originating from aircraft in flight, and sounds which originate at airports and are directly related to flight operations;

2. Noise created by safety and protective devices, such as relief valves where noise suppression would defeat the safety release intent of the device;

3. Noise created by fire alarms;

4. Noise created by emergency equipment, including, but not limited to, emergency standby or backup equipment, and emergency work necessary in the interests of law enforcement or of the health, safety or welfare of the community; and including, but not limited lo, any emergency work necessary to replace or repair essential utility services;

5. Noise created by auxiliary equipment on motor vehicles used for highway maintenance;

6. Noise originating from officially sanctioned parades, sporting events and other public events;

7. Noise created by warning devices not operated continuously for more than thirty minutes per incident;

8. Noise created by motor vehicles when regulated by Sections 20.08.060 through 20.08.080;

9. Noise caused by natural phenomena;

10. Noise created by motor vehicles, licensed or unlicensed, when operated off public highways except when such sounds are received in District I of the city;

11. Noise originating from existing natural gas transmission facilities until such time as the state sets regulations governing said facilities.

B. The following sources of noise are exempt or partially exempt from the provisions of this chapter:

1. Noise created by the operation of equipment or facilities of surface carriers engaged in commerce by railroad;

2. Noise created by watercraft and float planes;

3. Noise emanating from temporary construction sites except between the hours of ten p.m. and seven a.m.; provided, however, noise emanating

from temporary construction sites is exempt or partially exempt from the provisions of this chapter except between the hours of ten p.m. and seven a.m. on weekdays and six p.m. and eight a.m. on Saturdays, Sundays and state recognized holidays if the receiving property is located within District I of the city;

4. Noise emanating from marine-oriented construction sites except between the hours of ten p.m. and seven a.m. on weekdays and weekends if the receiving property is located in District I of the city;

5. Noise created by aircraft-engine testing and maintenance not related to flight operations, except between the hours of ten p.m. and seven a.m.;

6. Noise originating from motor vehicle racing events at existing authorized facilities.

C. It is the intention of the city council to consider amendments to this chapter controlling the sources exempted in subsection B of this section after the State Department of Ecology promulgates specific regulations relating to these sources in the future.

Be and the same is hereby amended to read as follows:

Noises exempt—At all times~~—Partially exempt noises~~.

A. ~~The following noises are exempt from the provisions of this chapter at all times: provided, that nothing in these exemptions is intended to preclude the administrator from requiring installation of the best available noise abatement technology consistent with economic feasibility. The establishment of any such requirement shall be subject to the provisions of the Administrative Procedure Act, Chapter 34.04 RCW:~~ The following noises are exempt at all times from the maximum permissible levels established in 20.08.040 and 20.08.050.

1. Noise originating from aircraft in flight, and sounds which originate at airports and are directly related to flight operations;

2. Noise created by the operation of equipment or facilities of surface carriers engaged in commerce by railroad;

3. Noises created on property of federal military facilities;

~~1.~~4. Noise created by watercraft and float planes in operation;

~~2.~~5. Noise created by safety and protective devices, such as relief valves where noise suppression would defeat the safety release intent of the device;

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~~3.~~6. Noise created by fire alarms being used for its intended purpose;

~~4.~~7. Noise created by emergency equipment, including, but not limited to, emergency standby or backup equipment, and emergency work necessary in the interests of law enforcement or of the health, safety or welfare of the community; and including, but not limited lo, any emergency work necessary to replace or repair essential utility services;

~~5.~~8. Noise created by auxiliary equipment on motor vehicles used for highway maintenance;

~~6.~~9. Noise originating from officially sanctioned parades, sporting events and other public events;

~~7. Noise created by warning devices not operated continuously for more than thirty minutes per incident;~~

~~8.~~10. Noise created by motor vehicles when regulated by Sections 20.08.060 through 20.08.080;

~~9.~~11. Noise caused by natural phenomena;

~~10.~~12. ~~Noise created by motor vehicles, licensed or unlicensed, when operated off public highways except when such sounds are received in District I of the city;~~ Noise originating from motor vehicle racing events at existing authorized facilities;

13. ~~Noise originating from existing natural gas transmission facilities until such time as the state sets regulations governing said facilities.~~ Noise created by existing stationary equipment used in the conveyance of water by a utility and noise created by existing electrical substations.

~~11.~~14. Noises in compliance with a lawfully issued conditional use permit or SEPA determination.

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~~B. The following sources of noise are exempt or partially exempt from the provisions of this chapter:~~

~~1. Noise created by the operation of equipment or facilities of surface carriers engaged in commerce by railroad;~~

~~2. Noise created by watercraft and float planes;~~

~~3. Noise emanating from temporary construction sites except between the hours of ten p.m. and seven a.m.; provided, however, noise emanating~~

~~from temporary construction sites is exempt or partially exempt from the provisions of this chapter except between the hours of ten p.m. and seven a.m. on weekdays and six p.m. and eight a.m. on Saturdays, Sundays and state recognized holidays if the receiving property is located within District I of the city;~~

~~4. Noise emanating from marine-oriented construction sites except between the hours of ten p.m. and seven a.m. on weekdays and weekends if the receiving property is located in District I of the city;~~

~~5. Noise created by aircraft engine testing and maintenance not related to flight operations, except between the hours of ten p.m. and seven a.m.;~~

~~6. Noise originating from motor vehicle racing events at existing authorized facilities.~~

~~C. It is the intention of the city council to consider amendments to this chapter controlling the sources exempted in subsection B of this section after the State Department of Ecology promulgates specific regulations relating to these sources in the future.~~

Section 11. Section 6(c) of Ordinance No. 534-78 (EMC 20.08.110), which reads as follows:

NOISES EXEMPT DURING DAYTIME HOURS. The following noises shall be exempt from the provisions of this chapter between the hours of 7:00 a.m. and 10:00 p.m. on weekdays and 9:00 a.m. and 10:00 p.m. on weekends:

1. Noise created by powered equipment used in temporary or periodic maintenance or repair of residential property, including but not limited to grounds and appurtenances, such as lawn mowers, powered hand tools, and composters;

2. Noise created by the discharge of firearms on authorized shooting ranges;

3. Noise created by the installation or repair of essential utility services;

4. Noise created by blasting;

5. Noise created by bells, chimes or carillons not operating for more than five minutes in any one hour;

6. Noise originating from forest harvesting and silvicultural activity.

Be and the same is hereby amended to read as follows:

~~NOISES EXEMPT DURING DAYTIME HOURS~~Noises Exempt During Daytime Hours. The following noises shall be exempt from the provisions of this chapter between the

hours of ~~7:00~~seven a.m. and ~~10:00~~ten p.m. on weekdays and ~~9:00~~nine a.m. and ~~10:00~~ten p.m. on weekends and holidays:

A. Noise created by powered equipment used in temporary or periodic maintenance or repair of residential property~~, including but not limited to grounds and appurtenances, such as lawn mowers, powered hand tools, and composters;~~.

~~A.~~B. Noise created by aircraft-engine testing and maintenance not related to flight operations.

~~B.~~C. Noise created by the discharge of firearms on authorized shooting ranges;

~~C.~~D. Noise created by the installation or repair of essential utility services;

~~D.~~E. Noise created by blasting;

~~E.~~F. Noise created by bells, chimes or carillons not operating for more than five minutes in any one hour;

G. Noise originating from forest harvesting and silvicultural activity.

H. Noise originating from temporary construction sites, excepting that noise from a temporary construction site that is received in a District 1 property is exempt between seven a.m. and ten p.m. on weekdays and between eight a.m. and six p.m. on weekends and holidays.

~~F.~~I. Noise emanating from marine-oriented construction sites except between the hours of ten p.m. and seven a.m. on weekdays and weekends if the receiving property is located in District I of the city.

Section 12. Section 7 of Ordinance No. 534-78 (EMC 20.08.130), which reads as follows:

Administrator.

A. ESTABLISHMENT. The position of Administrator is hereby established. The Administrator is authorized and directed to administer and enforce the provisions of this ordinance.

B. QUALIFICATIONS OF ADMINISTRATOR. The Administrator shall be a person having a working knowledge of acoustics and competent in the field of noise control. The Administrator shall have completed instructional guidance provided by the State Department of Ecology or other recognized institution to operate

Type I and Type II sound level meters, and make all computations and calculations necessary to enforce this ordinance.

C. DUTIES OF ADMINISTRATOR. The duties of the Administrator shall include but are not limited to:

1. Obtaining assistance from other appropriate City departments and officials.

2. Training police officers and staff.

3. Purchasing measuring instruments and training inspectors in their calibration and use.

4. To establish a noise control field procedures manual providing techniques and procedures for measuring or reducing noise and to provide for clarification, interpretation and implementation of this ordinance.

5. Investigating citizens' noise complaints.

6. Issuing orders for the reduction or elimination of noise in accordance with Section 11 of this ordinance.

7. Granting or denying variances according to procedures specified in Section 9.

8. Assisting citizens and City departments in evaluating and reducing the noise impact of their activities.

9. Assisting City planning officials in evaluating the noise component in planning and zoning actions.

10. Develop a generalized sound exposure map of the City; a long term plan for achieving quiet in the City, and with the approval of the City Council, integrating this plan into the planning process of the City;

11. Instituting a public education program on noise;

12. Reviewing at least every three years the provisions of this ordinance and recommending revisions consistent with technology to reduce noise.

Be and the same is hereby amended to read as follows:

Administrator established—Qualifications, powers and duties.

A. ~~ESTABLISHMENT.~~ Establishment. The position of a~~A~~dministrator is hereby established. The a~~A~~dministrator or her designee is authorized ~~and directed~~ to administer and enforce the provisions of this ordinance.

B. ~~QUALIFICATIONS OF ADMINISTRATOR.~~ Qualifications of Administrator. ~~The Administrator shall be a person having a working knowledge of acoustics and competent in the field of noise control.~~ The a~~A~~dministrator shall ~~have completed instructional guidance~~ be qualified to perform and interpret sound level measurements consistent with guidance provided by the State Department of Ecology or other recognized institution to operate Type I and Type II sound level meters, and make all computations and calculations necessary to enforce this ordinance.

C. ~~DUTIES OF ADMINISTRATOR.~~ Authority of Administrator. The ~~duties~~ authority of the a~~A~~dministrator shall include but ~~are~~ is not limited to:

1. Promulgate rules and regulations consistent with the terms of this ordinance and reasonably necessary to implement the provisions of this ordinance;

~~1.~~2. Obtaining assistance from other appropriate c~~C~~ity departments and officials to effectively administer this noise ordinance;~~.~~

~~2.~~3. Training police officers and staff in noise ordinance enforcement;~~.~~

~~3.~~4. Purchasing and maintaining sound measuring ~~instruments~~ equipment and training ~~inspectors~~ city staff in their calibration and use;~~.~~

~~4. To establish a noise control field procedures manual providing techniques and procedures for measuring or reducing noise and to provide for clarification, interpretation and implementation of this ordinance.~~

5. Investigating citizens' noise complaints;~~.~~

~~6. Issuing orders for the reduction or elimination of noise in accordance with Section 11 of this ordinance.~~

~~7.~~6. Granting or denying variances according to procedures ~~specified in Section 9.~~ set forth in this ordinance;

~~8.~~7. Assisting ~~citizens and C~~city departments in evaluating and reducing the noise impact of their activities;~~.~~

~~9. Assisting City planning officials in evaluating the noise component in planning and zoning actions.~~

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~~10.~~8. ~~Develop a generalized sound exposure map of the City; a long term plan for achieving quiet in the City, and with the approval of the City Council, integrating this plan into the planning process of the City~~;

~~11. Instituting a public education program on noise;~~ Providing public education and information regarding noise, this noise ordinance and City of Everett noise control districts;

~~12. Reviewing at least every three years the provisions of this ordinance and recommending revisions consistent with technology to reduce noise.~~

Section 13. Section 8 of Ordinance No. 534-78 (EMC 20.08.140), which reads as follows:

Measurement of Sound.

a. If the measurements of sound are made with a sound level meter, it shall be an instrument in good operating condition meeting the requirements for a Type I or Type II instrument, as delineated in American National Standards Institute Specifications (ANSI) Section 1.4-1971. If the measurements are made with other instruments, or assemblages of instruments, the procedure must be carried out in such a manner that the overall accuracy shall be at least that called for in Section 1.4-1971 ANSI for Type II instruments.

b. When the location, distance, or technique for measurement of sound is impractical or would yield misleading or inaccurate results, measurements shall be taken at other locations or distances utilizing appropriate correction factors, as specified in the rules promulgated by the Administrator.

c. Where a receiving property is partly within one district and partly within another, the maximum permissible noise level at a point within the property boundary shall be that permitted into a receiving property wholly within the district in which the sound is measured.

Be and the same is hereby amended to read as follows:

Measurement of s~~S~~ound.

A. If the measurements of sound are made with a sound level meter, it shall be an instrument in good operating condition meeting the requirements for a Type I or Type II instrument, as delineated in American National Standards Institute Specifications (ANSI) Section 1.4-~~1971~~2014. ~~If the measurements are made with other instruments, or assemblages of instruments, the procedure must be carried out in such a manner that the overall accuracy shall be at least that called for in Section 1.4-1971 ANSI for Type II instruments.~~

B. ~~When the location, distance, or technique for measurement of sound is impractical or would yield misleading or inaccurate results, measurements shall be taken at other locations or distances utilizing appropriate correction factors, as specified in the rules promulgated by the Administrator.~~ Sound measurements shall be taken using the guidance of WAC 173-58 "Sound level measurement procedures" and using any additional methods recognized as best practice by the noise industry.

C. ~~Where a receiving property is partly within one district and partly within another, the maximum permissible noise level at a point within the property boundary shall be that permitted into a receiving property wholly within the district in which the sound is measured.~~ Any sound measurements performed by a third party may be considered by the noise administrator, provided they are in accordance with this section and performed by an individual trained to operate Type I and Type II sound level meters.

Section 14. Section 9 of Ordinance No. 534-78 (EMC 20.08.150), which reads as follows:

Variances.

a. VARIANCE PROCEDURE.
   1. Any person who owns or is in possession of any property or use, or any process or equipment, may make a request for a variance to the administrator as established in Section 7 for relief from any provision of this ordinance governing the quality, nature, duration or extent of discharge of noise. The application shall be accompanied by such information and data as the Administrator may require.

   2. The City Council shall promulgate, and the Administrator shall enforce the rules and regulations governing the application for and granting of such variances, including hearings and notice.

b. A variance or its renewal shall not be the right of the applicant or holder thereof, but shall be at the reasonable discretion of the Administrator.

c. No variance shall be granted pursuant to this section until the Administrator has considered the relative interests of the applicant, other owners or possessors of property likely to be affected by the noise, and the general public.

d. An implementation schedule for achieving compliance with this ordinance shall be incorporated into any variance granted.

e. Variances granted pursuant to this ordinance may be renewed on terms and conditions and for periods which would be appropriate on the initial granting of a

variance. No renewal shall be granted except on application made at least sixty days prior to the expiration of the variance.

f. Any person aggrieved by the denial, grant or terms and conditions on the grant of an application or renewal of a variance by the Administrator may appeal such decision under procedures set forth in Sections 10 of this ordinance.

Be and the same is hereby amended to read as follows:

Variances.

~~a. VARIANCE PROCEDURE.~~

~~1. Any person who owns or is in possession of any property or use, or any process or equipment, may make a request for a variance to the administrator as established in Section 7 for relief from any provision of this ordinance governing the quality, nature, duration or extent of discharge of noise. The application shall be accompanied by such information and data as the Administrator may require.~~

~~2. The City Council shall promulgate, and the Administrator shall enforce the rules and regulations governing the application for and granting of such variances, including hearings and notice.~~

~~b. A variance or its renewal shall not be the right of the applicant or holder thereof, but shall be at the reasonable discretion of the Administrator.~~

~~c. No variance shall be granted pursuant to this section until the Administrator has considered the relative interests of the applicant, other owners or possessors of property likely to be affected by the noise, and the general public.~~

~~d. An implementation schedule for achieving compliance with this ordinance shall be incorporated into any variance granted.~~

~~e. Variances granted pursuant to this ordinance may be renewed on terms and conditions and for periods which would be appropriate on the initial granting of a variance. No renewal shall be granted except on application made at least sixty days prior to the expiration of the variance.~~

~~f. Any person aggrieved by the denial, grant or terms and conditions on the grant of an application or renewal of a variance by the Administrator may appeal such decision under procedures set forth in Sections 10 of this ordinance.~~

A. A person may request a variance from compliance with this ordinance by making an application with the administrator at least thirty (30) days before the time period for the variance is to take effect. The application shall be in writing and shall be accompanied by a fee in the amount of One Hundred

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Dollars ($100). The variance may not be used for private activities (weddings, parties, etc.). The applicant shall explain the:

1. Nature of the noise.
2. Source of the noise.
3. Duration for which the noise will be created.
4. Time period for which the variance will be necessary.
5. Reason why the noise violation cannot be avoided, and
6. Mitigating conditions the applicant will implement to minimize the noise level violations.
7. The applicant shall list all property owners who adjoin the subject property per County Assessor records, except that (1) the administrator may waive this property owner list requirement if the administrator determines that the granting of the variance would have no significant effect on adjoining property owners, and (2) the administrator may increase the required property owner list to include all property owners within five hundred feet (500') of the subject property per County Assessor records if the administrator determines that the granting of the variance would have a significant impact on such property owners.

B. The administrator, after informing the affected City departments, and after considering the relative interests of the applicant, of the other owners or possessors of property likely to be affected by the noise, and of the general public, may grant a variance if the administrator determines that the noise level violations:

1. Cannot be avoided,
2. Will exist for a specific period of time,
3. Will not endanger public health, safety or welfare, and
4. Have been mitigated to the greatest extent reasonably possible.

C. Variances granted pursuant to this ordinance shall be in writing and must include the time period the variance will be in effect and the location of the variance.

D. The administrator may deny a variance application if:

1. The administrator determines that the applicant does not meet the criteria listed in subsection B of this section; or
2. The variance was obtained with false or misleading information.

E. The administrator may revoke a variance if:

1. At any time during the variance the administrator determines that the variance holder no longer meets the criteria listed in subsection B of this section;

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2. The variance holder causes or permits noise that fails to comply with the variance or other provisions of this ordinance not affected by the variance and the issuance of a violation citation or stop work order has been or would be ineffective to secure compliance; or
3. The variance was obtained with false or misleading information.

F. The variance holder must post the variance in a viewable area at the location of the variance or keep it on their person during the effective period of the variance.

G. If the administrator grants a variance, notice shall be mailed by first class mail to those property owners appearing on the list provided by the applicant per the application requirement herein. The applicant shall be responsible for paying all mailing costs, which shall be in addition to the variance application fee.

H. Any variance granted by the administrator shall be restricted in duration and an implementation schedule for achieving compliance with this ordinance shall be incorporated therein. No variance shall exceed thirty (30) days. Variances may be renewed, but no renewal shall be granted unless application is made at least sixty (60) days prior to expiration of the issued variance and the applicant complies with all other requirements of this section.

I. Any person aggrieved by a variance decision may file an appeal in writing with the land use hearing examiner within ten (10) days of issuance of the administrator's decision. The appeal shall be a proceeding pursuant to Title 15, Review Process IIIA. The appellant must prove by clear and convincing evidence that the administrator abused his or her discretion in a decision made pursuant to this section. Any appeal of a variance decision by the administrator may be affirmed, reversed, or modified by the hearing examiner. The decision of the hearing examiner shall be final. The applicable provisions of Title 15 shall govern procedure and process of any appeal of an administrator's decision, except that public notice requirements established in EMC 15.24.110 do not apply to this appeal process. Further, where a provision of Title 15 conflicts with a provision of this section, this section controls.

Section 15. Section 12 of Ordinance No. 534-78, as amended by Section 3 of Ordinance No. 690-80 (EMC 20.08.220), which reads as follows:

Violation—Penalty.

A. Punishment for Violations and Crimes. Every offense defined by this chapter or conduct made unlawful thereby shall also constitute an offense under the Everett criminal code, and any person convicted of such an offense shall be punished by a fine not to exceed five hundred dollars or by imprisonment in the jail not to exceed six months, or both imprisonment and fine.

B. Evidence in Criminal Proceedings. In any criminal prosecution under Section 4(c) of Ordinance No. 534-78 (codified as Everett Municipal Code Sections 20.08.090) and 20.08.080(A) and 20.08.080(B) or Section 5 of Ordinance No. 534-78 (codified as Everett Municipal Code 20.08.090), evidence of sound level through the use of a sound-level meter reading shall not be necessary to establish the commission of the offense.

C. Penalty for Failure to Comply with Final Orders. In addition to any other sanction or remedial injunctive procedure which may be available at law or equity, any person failing to comply with a final order issued by the administrator or board of adjustment (hearing officer if appropriate), shall be subject to a cumulative civil penalty in an amount not to exceed one hundred dollars per day from the date set for compliance until such order is complied with. The civil penalty shall be collected by such action brought in the name of the city.

Be and the same is hereby amended to read as follows:

Enforcement--Violation—Penalty.

~~A. Punishment for Violations and Crimes. Every offense defined by this chapter or conduct made unlawful thereby shall also constitute an offense under the Everett criminal code, and any person convicted of such an offense shall be punished by a fine not to exceed five hundred dollars or by imprisonment in the jail not to exceed six months, or both imprisonment and fine.~~

~~B. Evidence in Criminal Proceedings. In any criminal prosecution under Section 4(c) of Ordinance No. 534-78 (codified as Everett Municipal Code Sections 20.08.090) and 20.08.080(A) and 20.08.080(B) or Section 5 of Ordinance No. 534-78 (codified as Everett Municipal Code 20.08.090), evidence of sound level through the use of a sound-level meter reading shall not be necessary to establish the commission of the offense.~~

~~C. Penalty for Failure to Comply with Final Orders. In addition to any other sanction or remedial injunctive procedure which may be available at law or equity, any person failing to comply with a final order issued by the administrator or board of adjustment (hearing officer if appropriate), shall be subject to a cumulative civil penalty in an amount not to exceed one hundred dollars per day from the date set for compliance until such order is complied with. The civil penalty shall be collected by such action brought in the name of the city.~~

A. It shall be unlawful to violate or be in conflict with this ordinance. Each day, defined as the twenty-four-hour period beginning at 12:01 a.m., in which violation of this ordinance occurs, shall constitute a separate violation.

B. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be subject to the provisions of chapter 1.20 EMC. In the event an appeal of an order issued pursuant to chapter 1.20 EMC is not subject to RCW 36.70C (the Land Use Petition Act), appeal shall be by writ of certiorari.

C. A violation of Section 8 or of Section 9(B), 9(C), or 9(D) of this ordinance is a criminal misdemeanor punishable in accordance with EMC 10.04.080.

D. Evidence in Criminal Proceedings. In any criminal prosecution under Section 8 or Section 9(B), 9(C), or 9(D) of this ordinance, evidence of sound level through the use of a sound-level meter reading shall not be necessary to establish the commission of the offense.

Section 16. Repealer

Sections 6(d) (EMC 20.08.120), 10(a) (EMC 20.08.160), 10(b) (EMC 20.08.170), 10 (c-d) (EMC 20.08.180), 10(e) (EMC 20.08.190), and 11 (EMC 20.08.200) of Ordinance No. 534-78, all as amended, are hereby repealed, including all ordinances in conflict herewith.

Section 17. Severability

Should any section, subsection, paragraph, sentence, clause or phrase of this Ordinance or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation. The City Council of the City of Everett hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

Section 18. General Duty

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose

any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Section 19. Savings

The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 20. Corrections

The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

_____

Ray Stephanson, Mayor

ATTEST:

_____

City Clerk

Passed:

Valid:

Published:

Effective Date: