

ORDINANCE 10-12

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF HOLBROOK, ARIZONA, ADDING ARTICLE 3-8 TO THE HOLBROOK MUNICIPAL CODE AND DESIGNATING AN EFFECTIVE DATE:

RECITALS:

WHEREAS, the addition of Article 3-8 to the City Code which will make Chapter 3 of the City Code a more effective regulation for City staff, City citizens and others;

WHEREAS, said additions are authorized by A.R.S. § 9-462.03; and

WHEREAS, the City has complied with the requirements set forth in A.R.S. § 9-262.04;

ENACTMENTS:

NOW, THEREFORE, be it ordained by the Mayor and Council of the City of Holbrook, Arizona, as follows:

Section 1. That the certain "Article" of the City of Holbrook City Code, Chapter 3, be added as follows:

ARTICLE 3-8

SECTIONS:

- 3-8-1 Unreasonable noise generally prohibited.
- 3-8-2 Loud radios, sound sets, and the like.
- 3-8-3 Vehicular noise.
- 3-8-4 Construction of buildings or other projects.
- 3-8-5 Exemptions.
- 3-8-6 Penalty for violations.

3-8-1 Unreasonable noise generally prohibited.

It shall be unlawful for any person to make, continue or cause to be made or continued, within the limits of the city, any disturbing, excessive or offensive noise that causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area. The characteristics that should be considered in determining whether a violation of the provisions of this section should include, but not be limited to, the following:

1. The level of the noise;

2. Whether the noise is usual or unusual;
3. Whether the noise is natural or unnatural;
4. The level of the ambient noise in the area;

5. The proximity of the noise to sleeping facilities;
6. The nature and zoning of the area from which the noise emanates, and the area where it is received;
7. The time of day or night the noise occurs;
8. The duration of the noise; and
9. Whether the noise is recurrent, intermittent or constant.

3-8-2 Loud radios, sound sets, and the like.

a. The use or operation of any sound production or reproduction device, radio receiving set, musical instrument, drums, phonograph, television set, loud speakers and sound amplifier, or other similar machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet or comfort of any reasonable person of normal sensitivity in any area of is prohibited; provided, however, this provision shall not apply to any participant in a parade, gathering or similar activity who has been authorized by the city to engage in such conduct.

b. Any of the following shall constitute prima facie violations of this section:

1. The operation of any device set forth in subsection a. Hereof between the hours of 10:00 p.m. and 8:00 a.m. in such a manner as to be plainly audible at a distance of one hundred feet or more from the building, structure, vehicle or area where the source is located.

2. The operation of any sound amplifier, which is part of, or connected to, any radio, stereo receiver, compact disc player or other similar device, when operated in such a manner as to be plainly audible at a distance of one hundred feet or more from the source, or when operated in such a manner as to cause a person to be aware of vibration accompanying the sound at a distance of one hundred feet or more from the source.

3-8-3 Vehicular noise.

a. It shall be unlawful for any person within any residential area of the city to repair, rebuild or test any motor vehicle between the hours of 9:00 p.m. and 6:00 a.m. in such a manner as to create any excessive, unnecessary or offensive noise, such that a reasonable person or normal sensitivity residing in the area is caused discomfort or annoyance.

b. No person shall operate, or cause to be operated, any motor vehicle within the city unless the exhaust system of such vehicle:

1. Is free from defects which may cause sound level magnification;
2. Is equipped with a functioning muffler;
3. Has not been modified in such a manner which will amplify or increase the sound level emitted by the motor vehicle above that emitted by a muffler originally installed on the vehicle as manufactured for initial sale.

c. The use of any and all exhaust brakes, engine brakes, engine retarders, or similar devices shall be prohibited within the city; provided, however, that it shall be an affirmative defense to a violation of this paragraph that such device was used by the operator as a result of a bona fide emergency, and was reasonably necessary for the protection of persons and/or property.

3-8-4 Construction of buildings or other projects.

a. General prohibition. It shall be unlawful for any person to operate equipment or perform any outside construction or repair work on buildings, structures or projects, or to operate any pile driver, power shovel, pneumatic hammer, derrick, power hoist or any other construction-type device, except within the time periods specified in this section, unless an appropriate permit authorizing different times has been obtained beforehand from the city.

b. Construction start/stop times.

1. Construction in residential zones. From April 15 to October 15, inclusive, all construction or repair work conducted within five hundred feet of a residential property zone shall not begin prior to 5:00 a.m. and must stop by 9:00 p.m. each day. From October 16 to April 14, inclusive, such work may only be conducted between the hours of 6:00 a.m. and 7:00 p.m.
2. Other construction in commercial or industrial zones. Construction and repair work in commercial or industrial zones (not located within five hundred feet of a residential property zone) shall not begin prior to 5:00 a.m. and must stop by 9:00 p.m.
3. Weekends and holidays. Notwithstanding any other provision of this section, construction or repair work shall not begin prior to 6:00 a.m. on any Saturday, and 7:00 a.m. on any Sunday or state or federal holiday.

c. Permits. Construction and repair work may be conducted at different times than otherwise permitted, if upon written application, a permit is obtained beforehand from the city manager or his designee. The permit shall be kept on the work site and shown to building or law enforcement officials on request. In granting such permit, the city manager or his designee shall consider if construction noise in the vicinity of the proposed work site would be less objectionable at night than during the daytime because of different population levels or different neighboring activities; if obstruction and interference with traffic, particularly on streets of major importance, would be less objectionable at night than during the daytime; if the kind of work to be performed emits noises at such a low level as not to cause significant disturbance in the vicinity of the work site; if the neighborhood of the proposed work site is of such a character wherein sleep could be disturbed; if great economic hardship would occur if the work was spread over a longer time; if the work will abate or prevent hazards to life or property; if

proposed early morning or night work is in the general public interest; and, he shall prescribe such conditions, working times, types of construction equipment to be used, and permissible noise emissions as he deems to be required in the public interest. No permit shall be required to perform work performed to prevent or alleviate physical trauma or property damage threatened or caused by an emergency, which has or may result in a disruption of service, and which is necessary to protect the health, safety and welfare of persons or property.

d. Revocation of permits. The city manager or his designee may revoke any permit granted hereunder, upon complaint based upon evidence that the construction activity caused significant disturbance in the vicinity of the work site.

e. Notice to stop work. Whenever any work on a construction project is in violation of any provision of this section, the city may, in addition to other remedies for the violation, order the construction project stopped by notice in writing served on any persons responsible for the project, and all persons thereafter shall stop work on the project until authorized by the city to once again proceed with such work.

3-8-5 Exemptions.

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

1. Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency;
2. Noises created by any city vehicle, equipment or facility while being operated for official use;
3. Operation of agricultural equipment in connection with farming operations;
4. Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations or air traffic control instructions pursuant to, or within, duly adopted federal air regulations, together with any noise created by aircraft operated under, or pursuant to, declaration of an emergency under federal air regulations;
5. Noises resulting from "emergency work," which, for purposes of this section, shall mean work performed to prevent or alleviate physical trauma or property damage threatened or caused by an emergency, which has or may result in the disruption of utility or other vital service, and which is reasonably necessary to protect the health, safety and welfare of persons or property.
6. Noises resulting from a special event being held within the city. (i.e. Parades, Navajo County Fair or High School sporting events.)

3-8-6 Penalty for violations.

- A. Treatment as civil violation.
A violation of any provision of this chapter shall be prosecuted as a civil offense, and the hearing officer shall impose a civil sanction of not less than two hundred fifty dollars, nor more than two thousand five hundred dollars, for each violation.

- B. Habitual offender. A "habitual offender" is a person who commits a violation of any provision of this chapter, after having previously been found responsible for two or more violations within a twenty-four-month period, whether by admission, by payment of the fine, by default or judgment after hearing. For purposes of this section, the dates of calculating the twenty-four-month period shall be the dates of commission of the offenses. ~~Offenses committed by habitual offenders, as defined herein, shall be treated as a class 1 misdemeanor, punishable by a sentence of incarceration not to exceed six months, a fine not to exceed two thousand five hundred dollars (exclusive of penalty assessments prescribed by law), or both. The court shall not suspend the imposition of the minimum sanction unless the court finds by a preponderance of the evidence that the person has corrected every violation for which he was found responsible, and that the person is in compliance with this chapter. In that event, the court may, in its discretion, suspend all but one hundred fifty dollars (\$150.00) of the sanction upon such conditions as the court deems just.~~

Criminal

- A. Every person who intentionally, knowingly, willfully or recklessly causes, allows, suffers or permits a violation of this chapter to exist with respect to such land, building or structure commits a class one misdemeanor.
- B. Upon conviction, the court, at a minimum, shall sentence the defendant to a fine of not less than two hundred fifty dollars (\$250.00) and to probation for not less than one year. The court may suspend the imposition of the minimum fine or probation unless the court finds by a preponderance of the evidence that the defendant has corrected every violation for which the defendant was found guilty, and that the defendant is in compliance with this chapter. In that event the court may, in its discretion, suspend all but one hundred dollars (\$100.00) of the fine on the condition that the defendant does not commit another criminal violation of this chapter for three (3) years following the date of sentencing.
- C. Actions not exclusive. The city's election to prosecute a civil or criminal action to enforce the provisions of this chapter does not limit or restrict the city's ability to bring against the defendant any other action authorized by law.
- D. Violations-separate violations on daily basis. Each violation of this chapter shall constitute a separate violation for each day that the owner permits the violation to occur, and may be prosecuted and punishable as an individual and separate offense for each day that the owner permits the violation to occur.

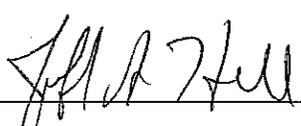
Section 2. REPEALING CLAUSE

All ordinances or parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed, effective as of the date of posting hereof.

Section 3. SEVERABILITY

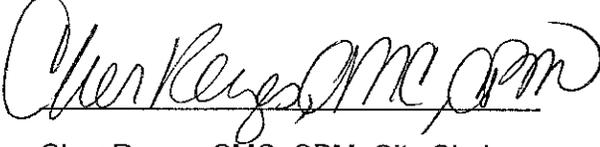
If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF
HOLBROOK, ARIZONA, this *28th* day of *Sept.* 2010.



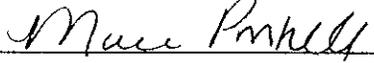
Jeff Hill, Mayor

ATTEST:



Cher Reyes, CMC, CPM, City Clerk

APPROVED AS TO FORM:



Marlene Pontrelli, Attorney