



Police Department

## City Council Report

**Date:** July 8, 2009  
**To:** City Council  
**Through:** Christopher J. Brady, City Manager  
**From:** George Gascón, Chief of Police  
**Subject:** Proposed City Noise Ordinances  
City-Wide

### Purpose and Recommendation

The City of Mesa Police Department (Department) is respectfully requesting that the City Council consider repealing and replacing Mesa City Code (Code), Chapter 12, Offensive, Excessive, and Prohibited Noises and Chapter 19, Disruptive Parties.

The proposed ordinance provides:

- Greater clarification and guidance to police officers and citizens on noise restrictions;
- Clearer instructions for the immediate resolution of noise complaints in the community;
- A more effective and immediate enforcement tool for police officers; and
- An increased level of safety and security for citizens of our community.

On May 18, 2009 two ordinances were submitted to the Public Safety Committee for review and discussion: Excessive Noise Ordinance and Unruly Gathering Ordinance. At that time, the Public Safety Committee approved forwarding the proposed ordinances to the full council for consideration.

On June 22, 2009 a presentation on the two proposed ordinances was given to the full council. The council approved moving forward with the proposed ordinances.

The ordinance we are submitting for final approval combines the two ordinances that were proposed initially into one ordinance since both govern excessive noise.

### Background

Under the existing Mesa City Code, police officers may issue violations for excessive or offensive noise within our community. Excessive or offensive noise includes operating or permitting the operation of electronic music devices or televisions, any loud noise in connection with the loading or unloading of vehicles, or permitting or allowing animals to make sounds. Currently, a violation of the excessive noise ordinance is punishable as a misdemeanor violation, which is a jailable offense and allows for the arrest of an individual.

Also, under the Mesa City Code, police officers may issue violations for disruptive parties when the gathering has been determined to be a threat to the public's health, safety, and welfare. The ordinance, however, does not allow police officers to take immediate action but authorizes an officer to take action only if there is a subsequent response by the police to that incident or a response to the same location within a ninety (90) day period.

Neither ordinance allows for the immediate resolution of noise complaints within our community.

### **Discussion**

In order to provide for the immediate resolution of noise complaints within our community, pertinent provisions of the Code should be repealed and replaced.

Specifically, the City's Offensive, Excessive, and Prohibited Noises ordinance, should be replaced with an ordinance that provides greater clarification and guidance to police officers and citizens on noise restrictions and provides clear instructions for the immediate resolution of noise complaints in the community. The proposed ordinance also makes a violation of the noise ordinance a civil offense rather than a criminal offense. Multiple offenses of the noise ordinance result in greater civil fines.

Similarly, the City's Disruptive Party ordinance should be replaced with an ordinance that allows police officers to take immediate action to resolve noise complaints for the health, safety and welfare of the community. Under this proposed ordinance, if two (2) or more individuals, while on private property, violate the noise ordinance, the police will have the authority not only to issue a civil citation, but also to disperse the parties involved.


### **Fiscal Impact**

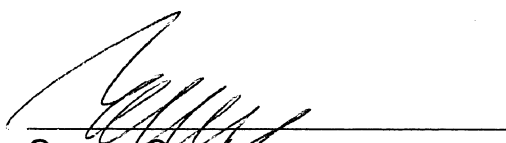
Revenues will be collected through the proposed fines.

### **Concurrence**

The following staff members concur with the recommendations to repeal and replace Mesa City Code, Chapter 12, Offensive, Excessive, and Prohibited Noises and Chapter 19, Disruptive Parties.

  
\_\_\_\_\_  
Nancy Sorensen  
Police Staff Attorney

  
\_\_\_\_\_  
John Meza  
Assistant Chief of Police  
Office of Operations

  
\_\_\_\_\_  
George Gascon  
Police Chief

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, REPEALING TITLE 6, CHAPTER 12 & TITLE 6, CHAPTER 19 OF THE MESA CITY CODE AND ADOPTING A NEW TITLE 6, CHAPTER 12 OF THE MESA CITY CODE RELATING TO OFFENSIVE, EXCESSIVE, AND PROHIBITED NOISES AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA AS FOLLOWS:

SECTION 1: That Title 6, Chapter 12, of the Mesa City Code, currently designated as the “OFFENSIVE, EXCESSIVE, AND PROHIBITED NOISES” code, is hereby repealed in its entirety.

SECTION 2: That Title 6, Chapter 19 of the Mesa City Code, currently designated as the “RECOVERY OF COSTS FOR POLICE SERVICES” code, is hereby repealed in its entirety.

SECTION 3: That a new Title 6, Chapter 12 of the Mesa City Code, entitled as the “OFFENSIVE, EXCESSIVE AND PROHIBITED NOISES” code is hereby adopted as set forth below

Section 6-12-1: **Introduction**

Certain noise levels must be tolerated by all citizens in order for the normal functions of city life to continue.

However, any loud, unnecessary, or unusual noise that is excessive, disruptive, and/or annoying is subject to regulation as provided herein.

Children playing, construction equipment, barking dogs, amplified musical instruments, trash trucks, airplanes, and loud parties are all examples of noise found within our community.

Section 6-12-2: **Prohibited Noises, standard**

The following activities are prohibited if they produce:

- i. Any loud, unnecessary, or unusual noise that is excessive, disruptive, and/or annoying; and

- ii. Are continuous or intermittent for a period of at least fifteen (15) minutes; or
  - iii. Occur after 10:00 p.m. but before 6:00 a.m.; and
  - iv. Are plainly audible beyond the property line of the property on which conducted; and
  - v. Disturbs the peace and quiet of a neighborhood or a reasonable person of normal sensibilities or special event.
- (1) Allowing or causing any noise by using, operating or permitting to be played any electronic music device, television, amplifier, musical instrument, or instrument, machine or device used for the production, reproduction or emission of sound.
- (2) Creating or allowing any noise in connection with the loading or unloading of any vehicle.
- (3) Owning, possessing, harboring or permitting any animal or bird which frequently or for continuous duration howls, barks, meows, squawks or makes other sounds.
- (4) Allowing or causing any malicious or willful shouting, yelling, screaming, or any other form of raucous vocalization by a person or group of people.

**Section 6-12-3 Other Prohibited Noises**

- (1) Use any automobile, motorcycle or other vehicle, engine or motor of whatever size, stationary or moving, instrument, device or thing, in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise.
- (2) Operating any mechanical device operated by gasoline, or otherwise, without having a muffler, in good working order and in constant operation, to prevent excessive or unusual noise and smoke; and no person shall use a muffler cutout, bypass or similar device.
- (3) Operating or permitting the operation of any sound amplification system in or on a vehicle in such a manner or with such volume as to annoy or disturb the peace and quiet of any reasonable person of normal sensibilities or neighborhood in the vicinity.
- (4) Operating or permitting the operation of any sound amplification system in or on a vehicle in such a manner that the sound is plainly audible at a distance of fifty (50) feet, or in such a manner that it causes a person of normal sensibilities to be aware of vibration accompanying the sound at a distance of fifty (50) feet.

(5) Maintaining or operating an outdoor speaker that is affixed to any structure or placed upon any property where:

- (a) The speaker is audible for a distance of more than fifty (50) feet from the source; or
- (b) The speaker is two hundred fifty (250) feet or closer to a location that is zoned or developed for residential use. This restriction shall not apply to intercommunication systems that are utilized from 9:00 a.m. to 6:00 p.m. for the sole purpose of conducting the internal business affairs of the establishment.
- (c) This provision does not prohibit use of an outdoor speaker where a temporary exemption has been granted by the city manager or designee.

**Section 6-12-4: Unruly Gathering**

A gathering of two (2) or more persons on any private property, including property used to conduct business, in a manner which disturbs the peace and quiet of a neighborhood or a reasonable person of normal sensibilities and/or creates noise prohibited under 6-12-2.

**Section 6-12-5: Abatement of Unruly Gathering**

A peace officer may abate an unruly gathering by reasonable means including, but not limited to, citation and/or order dispersal of the persons attending the gathering.

**Section 6-12-6: General exemptions**

The following activities are exempted from the provisions of 6-12-2 and 6-12-3:

- (1) Emergency work necessary to restore property to a safe condition following a fire, accident or natural disaster; to restore public utilities; or to protect persons or property from an imminent danger;
- (2) Sound made to alert persons to the existence of an emergency, danger or attempted crime;
- (3) Activities or operations of governmental units or agencies;
- (4) Parades, concerts, festivals, fairs or similar activities that have been approved by the city for a special events permit;

- (5) Athletic, musical or cultural activities or events (including practices and rehearsals) conducted by or under the auspices of public or private schools, and public or private colleges or universities;
- (6) Activity, including commercial activity, which is permitted under the zoning code.
- (7) Construction, repair, remodeling, demolition, drilling, landscape maintenance, landscaping, lawn or yard work, wood cutting, including crafts and hobbies, or excavation work conducted between 6:00 a.m. through 8:00 p.m. Mondays through Fridays, Also, a person may engage in or allow such activities at that person's residence between 6:00 a.m. and 8:00 p.m. on Saturdays or Sundays.

Section 6-12-7: **Temporary exemptions**

A) The city manager or designee is authorized to grant a temporary exemption from the requirements established by this article if such temporary exemption would be in the public interest and there is no feasible and prudent alternative to the activity, or the method of conducting the activity, for which the temporary exemption is sought.

B) A temporary exemption must be in writing and signed by the city manager or designee and must set forth the name of the party granted the exemption, the location of the property for which it is authorized, the date(s) and time(s) for which it is effective.

C) A temporary exemption may be granted only for the period of time that is reasonably necessary to conduct the activity, which in no case may exceed thirty (30) days, unless otherwise specified.

D) The following factors shall be considered by the city manager or designee in determining whether to grant a temporary exemption:

- (1) The balancing of the hardship to the applicant, the community and other persons in not granting the variance against the adverse impact on the health, safety and welfare of persons adversely affected and any other adverse effects of the granting of the variance;
- (2) The nearness of any residence or residences, or any other use;
- (3) The level of the sound to be generated by the event or activity;

- (4) Whether the type of sound to be produced by the event or activity is usual or unusual for the location or area for which the variance is requested;
- (5) The density of population of the area in which the event or activity is to take place;
- (6) The time of day or night which the activity or event will take place;
- (7) The nature of the sound to be produced, including but not limited to whether the sound will be steady, intermittent, impulsive or repetitive.

**Section 6-12-8: Persons responsible for noise violations**

- A) The person responsible for an activity that violates this section shall be deemed responsible for the violation.
- B) If the person responsible for an activity that violates this section cannot be determined, the owner, property manager or agent of the owner, sponsor of the event, lessee or occupant of the property on which the activity is located shall be deemed responsible for the violation.
- C) Any person in attendance who engaged in any conduct causing the disturbance may also be deemed responsible for the violation.
- D) After three (3) violations on the same property, in addition to the above, the owner of the property may also be deemed responsible for the violation.

**Section 6-12-9: Enforcement**

- A) The police department is authorized to enforce the provisions of this section. A complaining member of the public shall not necessarily be required to appear in court before a violator may be found responsible for a violation of this section.
- B) Officers responding to a complaint under the provisions of this section may:
  - 1. Advise the concerned parties of the violation and seek to gain voluntary compliance; or
  - 2. Issue a civil infraction violation.

**Section 6-12-10: Penalty**

- A) Any person who shall violate any of the provisions of this Chapter or of the Mesa City Code as amended herein shall be guilty of a civil infraction.

B) The penalty for a person found responsible for a first violation shall be a mandatory minimum fine of two hundred and fifty dollars (\$250.00); a mandatory minimum fine of five hundred dollars (\$500.00) for a second violation; and a mandatory minimum fine of two thousand and five hundred dollars (\$2,500.00) for a third or subsequent violation.

C) The Court may, in its own discretion, grant cost recovery for law enforcement services and/or establish a surcharge.

D) Each subsequent violation shall be a separate offense, punishable as hereinabove described.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk