

ORDINANCE No. XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING CHAPTER 8.16 OF THE ATHERTON MUNICIPAL CODE

WHEREAS, the Town of Atherton ("Town") has adopted a Noise Control Ordinance to protect the peace, health and safety of its citizens from unnecessary and unreasonable noise; and,

WHEREAS, repeated of the Noise Ordinance continue to cause harm to the residents of the Town; and,

WHEREAS, the Town wishes to refine the definition Noise Control Ordinance to provide new policy guidance for social gatherings; and

WHEREAS, the Town wishes to provide a permitting process whereby excessive noise levels may be permitted in order to protect lives or property; and

The City Council of the Town of Atherton does hereby ordain as follows:

Section 1. PURPOSE AND AUTHORITY

The purpose of this amendment is to amend Chapter 8.16 to expand the Town's Noise Control Ordinance to provide updated policy guidance for social gatherings, adopt a process for regulating excessive noise in order to protect the public welfare and the quiet enjoyment of property by neighbors while simultaneously allowing other property owners the ability to host events.

Section 2. AMENDMENTS TO ATHERTON MUNICIPAL CODE CHAPTER 8.16

Chapter 8.16 is to read as follows, with changes reflected in redline:

8.16.010 Declaration of policy.

In accordance with the Atherton General Plan, which seeks to maintain Atherton as "a rural residential area," it is the policy of the Town to protect the peace, health, and safety of its citizens from excessive, unnecessary, and unreasonable noise produced by any person, machine, animal, or device. It is further declared to be the policy of this Chapter to assess complaints of noises alleged to exceed established noise levels from the property line of the complaining property.

8.16.020 Definitions.

As used in this chapter:

A. "A-weighted sound level" is the sound level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

B. "Ambient" is the composite of noise from all sources near and far. In this context, the ambient noise level constitutes the normal or existing level of environmental noise at a given location.

C. "Construction" means the act or process of building including but not limited to site preparation, alteration, repair, remodeling, assembly, erection, or similar action, of buildings, structures, pavement, flat work and other works including the use of power equipment in connection with activities therewith. Construction activities do not include radios or other forms of amplified music on a construction site.

D. "Delivery" means delivery of building materials or equipment to any construction project.

E. "Emergency" means an unforeseen combination of circumstances which require immediate action.

F. "Noise disturbance" means any source of sound which exceeds the noise limitations permitted in Section 8.16.030 of this chapter. For purposes of this section, sources of sound shall include but not be limited to the following: amplified music, loudspeakers, radios, televisions, stereos, musical instruments, powered toys or models, swimming pools or spas, pile drivers, air compressors, paint sprayers, motors, pumps, blowers, air conditioners, cooling towers, ventilating fans, fork lifts, loaders, tractors, animals, concerts, mechanical equipment, human voices, electrical appliances, vacuum cleaners, powered equipment, chain saws, motor vehicles and attached equipment not operated on a street or highway.

G. "Noise level" means the maximum continuous sound level or repetitive peak level measured using the "A" scale set on "slow."

H. "Precision sound level meter" means a device for measuring sound pressure level in decibel units according to the American National Standards Institute Type 1 or Type 2 measuring instruments.

I. "Sound level" shall be expressed in decibels (dBA) as defined by the American National Standards Institute using the A-level scale.

J. "Vehicle" means any device by which any person or property may be propelled, moved or drawn upon a highway or street or private property.

K. "Social Gathering" means a gathering at a residential unit or other private premises, including but not limited to Accessory Dwelling Units, of 10 or more persons who have assembled from different households for social or other community activities.

Commented [JF1]: New definition added- Social Gathering

8.16.030 Basic noise regulation.

Except as otherwise permitted under this chapter, no person shall cause and no property owner, tenant, or other agent shall permit on such owners' property, a noise produced by any person, machine, animal or device, or any combination thereof, in excess of the sound level limits set forth in this section to emanate from any property, public or private, beyond the property line. Any sound in excess of the sound level limits set forth in this section shall constitute a noise disturbance. For purposes of determining sound levels, sound level measurements shall be made at the outside perimeter of the complaining property.

Sound Level Limits

7 a.m. to 10 p.m. 60 dBA

10 p.m. to 7 a.m. 50 dBA

A. In the event the alleged offensive noise contains a steady, audible tone, such as a whine, beating, pulsating, throbbing, or hum, the standards set forth in Section 8.16.030 shall be reduced by five (5) dBA.

B. In the event the ambient sound level equals or exceeds the sound level limit then the limit shall be five (5) dBA over the ambient.

8.16.040 Noise disturbance prohibited.

A. Any and all excessively annoying, loud or unusual noises or vibrations (as measured by the sound level limits set forth in Section 8.16.030) that offend the peace and quiet of persons of ordinary sensibilities and which interfere with the comfortable enjoyment of life or property and affect at the same time an entire neighborhood, or any considerable number of persons shall be considered a noise disturbance and are prohibited.

B. It shall be unlawful to create, permit, allow, or maintain a noise disturbance in the Town of Atherton.

8.16.050 Special provisions and exceptions.

The basic noise regulation specified in Section 8.16.030 may be exceeded without permit in any instances listed below. At all other times, noise shall not exceed the basic noise regulation established in Section 8.16.030:

A. Construction.

1. Construction and delivery are exempt from the basic noise regulation during the times and on the days when construction activities are allowed pursuant to the terms and provisions of Chapter 15.40.

2. Residents/property owners when personally operating equipment are exempt from the basic noise regulation when they are personally undertaking construction activities to maintain or improve their property on Saturdays, Sundays, or holidays between the hours of ten a.m. and five p.m. Such activities are restricted to the use of hand and power tools only.

3.

B. Power Garden Equipment

1. Power garden equipment including but not limited to, leaf-blowers, vacuums, power mowers, rototillers, and other similar equipment are exempt from the basic noise regulation between the hours of eight a.m. and six p.m. Monday through Friday, ten a.m. and five p.m. on Saturday and ten a.m. and three p.m. on Sunday.

2. Heavy duty equipment including but not limited to wood-chippers, chainsaws, stump-removers, and other similar equipment are exempt from the basic noise regulation between the hours of eight a.m. and five p.m. Monday through Friday only.

3. All garden, maintenance and construction equipment used in the town must be equipped with a muffler where applicable and be in good repair.

C. *Motor Vehicles.* Motor vehicles may be operated on public streets and highways within the town in accordance with the noise emission standards prescribed by the state Vehicle Code. It is the Town's policy that all sworn personnel be trained in the enforcement of this section of the Vehicle Code.

D. *Social Gatherings.* The noise from Social Gatherings may exceed the basic noise regulation as specified below during the following days and times. Noise shall be measured from the property line of the complaining property.

— Fridays, Saturdays, and Holidays, 10 am to 10 pm - noise shall not exceed 75 dBA

— Fridays and Saturdays, 10 pm to midnight - noise shall not exceed 70 dBA

— Sundays, 10 to 8 pm - noise shall not exceed 75 dBA

Commented [JF2]: Updated language

E. *Animals.* Sounds from animals are exempt unless such animal howls, barks, meows, squawks, or makes other noises continuously and/or incessantly for a period of five minutes or intermittently for one-half hour.

F. *Emergency and Safety Devices.* The provisions of this chapter shall not apply to:

1. The emission of sound for the purpose of alerting persons to the existence of an emergency.
2. The emission of sound in the performance of emergency response; or
3. The emission of sound in connection with the protection of the health and safety of Atherton residents or their property during emergency conditions. Warning devices necessary for the protection of public safety, as for example, police, fire and ambulance sirens, and train horns, shall be exempted from the provisions of this chapter.

G. *Little League Field at Holbrook-Palmer Park.* Unless allowed by a permit to the contrary, the noise from practice and games at the Little League Field at Holbrook-Palmer Park may exceed the basic noise regulations during the Little League season between the hours of four-thirty p.m.

to seven-thirty p.m. weekdays and eight forty-five a.m. to four-thirty p.m. Saturdays only. The noise levels produced by such games shall not exceed seventy-five dBA when measured at the property line of a complaining property.

H. Governmental Activities. Any noise sources associated with official governmental activities, including but not limited to tree and park maintenance, road work, or meetings, shall not be subject to the noise standards herein.

8.16.060 Aircraft regulations.

It shall be the policy of the town to work with nearby communities and other interested agencies to bring about a reduction of noise levels by private, military, public and commercial airplanes and helicopters.

8.16.070 Administration.

The provisions of this chapter shall be administered by the chief of police and his or her authorized representatives, except where expressly provided otherwise. All other officers and employees of the Town shall assist and cooperate in the administration and enforcement of this chapter.

~~8.16.070(B) — Permit to Exceed Noise Level.~~

Commented [JF3]: Delete

8.16.080 Violations.

A. Upon the receipt of a complaint from any person, the chief of police or his or her designee may investigate and assess whether the alleged noise levels exceed the noise standards set forth in this Chapter. If such officer(s) have reason to believe that any provision(s) of this chapter has been violated, they may cause written notice to be served upon the alleged violator. Such notice shall specify the provision(s) of this chapter alleged to have been violated and the facts alleged to constitute a violation, including dBA readings noted and the time and place of their detection and may include an order that corrective action be taken within a specified time. If corrective action is not taken within such specified time, upon conviction the violation shall constitute a misdemeanor. For every fifteen minutes that the noise exceeds the thresholds allowed in this Chapter, and after the written notice by the officer(s), each following fifteen minutes that the noise continues shall constitute a separate offense and shall be punishable as a misdemeanor.

B. Notwithstanding any contrary provision of this code, each fifteen (15) minute period that a violation of this Chapter occurs shall constitute a separate violation. The administrative penalty for each violation shall be one thousand dollars (\$1,000.00).

Commented [JF4]: New language added

~~8.16.080 Violations~~

Commented [JF5]: Removed

8.16.100 Penalties.

A. When a Social Gathering occurs at a premise and a police officer at the scene determines that there is a violation of this Chapter, the person(s) in charge of the premises and the person(s) responsible for the event, or if any of those persons are minors, then the parent(s) or guardian(s) of those minors will be held jointly and severally liable for the cost of providing police personnel on special security assignment over and above the services normally provided by the department to respond to such events. First time violators will be warned; upon subsequent violations of the provisions of this chapter, the police personnel utilized during a second response after the first warning to control the threat to the public peace, health, safety or general welfare shall be deemed to be on special security assignment over and above the services normally provided.

B. No fee shall be assessed unless a written warning has been issued by police personnel during the first response.

C. The expense of services provided by special security assignment officers shall be charged against the property owner and/or person liable for the expenses under this section. The charge constitutes a debt of that property owner and person to the city, jointly and severally, and is collectible by said city in the same manner as in the case of an obligation under a contract, express or implied.

Commented [JF6]: New language added

Section 3. SEVERABILITY

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. To the extent that prior Town ordinances governed any portion of this Ordinance held invalid, such prior Town ordinances shall again become effective if any portion of this Ordinance is held invalid.

Section 4: EFFECTIVE DATE

This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Introduced on the ____ day of _____, 2022.

Passed and adopted as an ordinance of the City Council of the Town of Atherton at a regular meeting thereof held on the ____ day of _____, 2022 by the following vote:

Ayes:

Noes:

Abstentions:

Mayor Rick DeGolia

ATTEST:

Anthony Suber, City Clerk/ACM