

Chapter 8.32 - NOISE CONTROL<sup>[1]</sup>**Sections:***Footnotes:*

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**Editor's note**—Ord. No. 2943, § 1, adopted Jan. 12, 2010, repealed the former Chapter 8.32, §§ 8.32.010—8.32.120, and enacted a new Chapter 8.32 as set out herein. The former Chapter 8.32 pertained to similar subject matter and derived from Ord. 2747, § 2(part), adopted in 1999; and Ord. 2869, § 29, adopted in 2006.

## 8.32.010 - Purpose.

- A. The making and creation of loud, unnecessary or unusual noises within the limits of the city is a condition which has existed for some time and the extent and volume of such noises is increasing.
- B. The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual and unnatural in their time, place and use affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the city; and
- C. The necessity in the public interest for the provisions of this chapter is declared as a matter of legislative determination and public policy, and it is further declared that the provisions of this chapter are for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare, prosperity and peace and quiet of the city and its inhabitants.

(Ord. No. 2943, § 1, 1-12-10)

## 8.32.020 - Definitions.

- A. "City" means the city of Whittier.
- B. "City manager" means the city manager of the city of Whittier, or his/her designee.
- C. "Chief of police" means the chief of the Whittier Police Department.
- D. "Construction" means any site preparation, assembly, erection, substantial repair, alteration, demolition, or similar action.
- E. "Continuous sound" means and denotes a sound the intensity of which remains essentially constant during a given period of time.
- F. "Director" means the director of community development of the city of Whittier, or his/her designee.
- G. "Daytime" denotes the local time of day between the hours of seven a.m. and nine p.m. on weekdays and between the hours of nine a.m. and nine p.m. on Saturdays, Sundays and local legal holidays.
- H. "Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage, which demands immediate action.
- I. "Emergency signal device" means any audible warning device, such as a gong, whistle or siren or any air horn or any similar device, used for emergency purposes or alert the public or emergency personnel to the existence of an emergency.
- J. "Emergency work" means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.
- K. "Mobile source" means any moving sound source on a public right-of-way.
- L. "Motor vehicle" means a vehicle that is self-propelled. "Motor vehicle" includes, but is not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, motorcycles, minibikes, go-carts, snowmobiles, mopeds, amphibious craft on land, dune buggies, all-terrain vehicles or racing vehicles. "Motor vehicle" does not include a self-propelled wheelchair, motorized tricycle, or motorized quadricycle, if operated by a person who, by reason of physical disability, is otherwise unable to move about as a pedestrian.

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"Motorcycle" means (1) a motor vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground; (2) a motor vehicle that has four wheels in contact with the ground, two of which are a functional part of a sidecar, is a motorcycle if the vehicle otherwise comes within the definition of subdivision (1); (3) a farm tractor is not a motorcycle; (4) a three-wheeled motor vehicle that otherwise meets the requirements of subdivision (1), has a partially or completely enclosed seating area for the driver and passenger, is used by local public agencies for the enforcement of parking control provisions, and is operated at slow speeds on public streets, is not a motorcycle. However, a motor vehicle described in this subdivision shall comply with the applicable sections of this code imposing equipment installation requirements on motorcycles.

2. "All-terrain vehicle (ATV)" means a motor vehicle that is all of the following: (1) designed for operation off of the highway by an operator with no more than one passenger; (2) fifty inches or less in width; (3) nine hundred pounds or less unladen weight; (4) suspended on three or more low-pressure tires; (5) has a single seat designed to be straddled by the operator, or a single seat designed to be straddled by the operator and a seat for no more than one passenger; (6) has handlebars for steering control.
- M. "Nighttime" means those hours excluded from the definition of "daytime."
- N. "Person" means any individual, corporation, partnership firm or any legal successor, representative or agent of the foregoing.
- O. "Public right-of-way" means any street, avenue, boulevard, highway, alley, sidewalk or public space which has been dedicated for use by the general public and the dedication of which has been accepted by the appropriate governmental entity.
- P. "Real property boundary" means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but it does not include intra-building real property division.
- Q. "Small power equipment" means any motorized or engine powered device, including but not limited to lawn mowers, lawn and garden tools, leaf blowers, riding lawn mowers and power saws, but excluding motor vehicles.
- R. "Sound amplifying equipment" means any machine or device for the amplification of the human voice, music or any other sound. Sound amplifying equipment as used herein shall not be construed as including standard automobile radio when used and primarily audible only by the occupants of the vehicle in which installed or warning devices on authorized emergency vehicles or horns or other warning devices on other vehicles used only for traffic safety purposes.
- S. "Special event" means assemblages, public meetings, and other special events including festivals, ceremonies, addresses, speeches, exhibits, performances, plays, circuses, musical events, athletic events that occur at a particular place and for a limited duration of time.
- T. "Stadium event" means events held at a facility with permanent seating and accommodations for more than one thousand spectators.
- U. "Stationary source" means any sound source operating or occurring on any public or private property.
- V. "Weekday" means any day Monday through Friday, which is not a legal holiday.

(Ord. No. 2943, § 1, 1-12-10)

#### 8.32.030 - Loud, annoying and unnecessary noises prohibited.

- A. It shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any excessive or unreasonable noise, which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.
- B. The standard that may be considered in determining whether a violation of the provisions of this section exists may include, but not be limited to, the following:
  1. The level of the noise;

2. Whether the nature of the noise is usual or unusual;
3. Whether the origin of the noise is natural or unnatural;
4. The level and intensity of the background noise, if any;
5. The proximity of the noise to residential sleeping facilities;
6. The nature and zoning of the area within which the noise emanates;
7. The density of the inhabitation of the area within which the noise emanates;
8. The time of the day and night the noise occurs;
9. The duration of the noise, including whether it is of a temporary or short-term nature;
10. Whether the noise is recurrent, intermittent, or constant; and
11. Whether the noise is produced by a commercial or noncommercial activity.

(Ord. No. 2943, § 1, 1-12-10)

#### 8.32.040 - Loud, annoying and unnecessary noises—Enumerated.

The city council finds the following to be loud, annoying and unnecessary noises, which are hereby declared to be in violation of this chapter; this list is deemed illustrative and shall not be construed in any way to be an exclusive or all-inclusive list of the noises prohibited by this chapter, it being the intent and purpose of this chapter to include and prohibit all noises of the character described in this section. Where no specific distance is set for the determination of audibility, reference to noise disturbance shall be deemed to mean plainly audible at a distance of one hundred feet from the real property boundary of the source of the sound, if the sound occurs on privately owned property, or from the source of the sound, if the sound occurs on the public right-of-way, public property, or private property open to the public. References to "adjacent" or "neighboring" residences or units in this section shall mean those residences or units located next to or in close proximity to the source of the noise, and no specific distance standard shall be required for such locations.

- A. **Animals and Birds.** The keeping of any animal or bird that causes frequent or long continued noise plainly audible by inhabitants or occupants of any adjacent or neighboring residential properties or units, or plainly audible at a distance of fifty feet from any nonresidential building or structure, shall be presumed to disturb the comfort and repose of any person in the vicinity and shall be prima facie evidence of a violation of this chapter; however, nothing in this subsection shall be construed to apply to occasional noises emanating from a legally operated kennel, animal hospital or veterinary clinic, humane society or pound.
- B. **Defect in Vehicle or Load.** The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.
- C. **Motor Vehicle Noises.** Any loud or annoying noise made by any motor vehicle and not reasonably necessary to the operation thereof under the circumstances, including, but not limited to, noise caused by screeching of tires; racing or accelerating the engine, except in the course of repair or adjustment thereof during nighttime hours; backfiring the engine; or the emission of exhaust from the engine tail pipe or muffler.
- D. **Domestic Power Tools.** Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, snow blower, small power equipment, or similar device used outdoors in residential areas during nighttime hours so as to cause a noise disturbance across a residential real property boundary.
- E. **Engine-Repair and Testing.** It shall be unlawful for any person to repair, rebuild or test any engine so as to create a noise disturbance, during nighttime hours.
- F. **Horns and Signaling Devices.** The sounding of any horn or signaling device on any automobile, motor vehicle or any other vehicle on any street or public street except as a danger warning; the creation by means of any such signaling device of any unreasonably and unnecessarily loud or harsh sounds; the

sounding of any such signaling device for an unnecessarily or unreasonably long period of time; or the use of any horn, whistle or other device operated by engine exhaust

- G. Loudspeakers/Public Address System. The using, operating or playing, or permitting to be played, used or operated, of any radio receiving set, musical instrument, audio system, loudspeaker, sound amplifying equipment or other machine or device for the producing or reproducing of sound, which casts sound upon the streets for the purpose of commercial or noncommercial advertising, or attracting the attention of the public to any building, structure or attraction (1) such that the sound there from creates a loud, annoying or unnecessary noise across a residential area; or (2) on a public right-of-way or public space, except as provided in Section 8.32.080.
- H. Radios, Musical Instruments and Similar Devices. The using, operating or playing, or the permitting to be played, used or operated, any stereo, radio receiving set, musical instrument, audio system, television set or any like machine or device that produces or reproduces sound, in such manner as to disturb at any time, the peace, quiet and comfort of the neighboring inhabitants, with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, chamber or place in which the machine or device is operated and who are voluntarily listening thereto. The operation of any such machine or device during nighttime hours in such a manner as to be plainly audible by inhabitants or occupants of any adjacent or neighboring residential properties or units, or plainly audible at a distance of fifty feet from any nonresidential building, structure, vehicle or place in which it is located, shall be prima facie evidence of a violation of this subsection.
- I. Yelling and Shouting. Loud or raucous yelling, shouting, hooting, whistling or singing in the public streets or in public places, or any other place, so as to annoy or disturb the quiet, comfort or repose of persons in any office or inhabitants or occupants of any neighboring or adjacent dwelling, hotel, apartment building or other kind of residence. The occurrence of such conduct during nighttime hours shall be prima facie evidence of a violation of this subsection.
- J. Noise in Proximity to Schools, Courts, Churches or Hospitals. The creation of any excessive noise on any street adjacent to a school, institution of learning, church or court while such facilities are in use, or adjacent to any hospital which unreasonably interferes with the work of the institution or which disturbs or unduly annoys patients of the hospital; however, this subsection shall not apply unless conspicuous signs are displayed in such streets indicating that there is located in the vicinity a school, hospital, court or church.
- K. Hawkers and Peddlers. The shouting or crying of peddlers, hawkers or vendors, so as to disturb the peace and quiet of the neighborhood.
- L. Erection or demolition of buildings, excluding owner resident additions or remodeling, and the grading and excavation of land including the use of blasting, the start up and use of heavy equipment such as dump trucks and graders and the use of jack hammers except on weekdays between the hours of seven a.m. and six p.m. and on Saturdays eight a.m. to five p.m. The city manager may waive any or all of the provisions of this subsection in cases of urgent necessity, or in the interest of public health and safety. The provisions of this subsection may also be waived or modified pursuant to a conditional use permit or other development entitlement processed and issued in accordance with the applicable city requirements and procedures.
- M. Late night disturbances of any kind that are plainly audible by inhabitants or occupants of any adjacent or neighboring residential properties or units, or are plainly audible at a distance of fifty feet from a real property boundary, that occur during nighttime hours, shall be prima facie evidence of violation of this subsection.

(Ord. No. 2943, § 1, 1-12-10)

8.32.050 - Mixed use developments.

Due to the unique nature of mixed use developments, as are designated as such in a specific plan, violations of this chapter shall be determined pursuant to Section 8.32.030. The distance requirements of Section 8.32.040 shall not apply to mixed use neighborhoods.

(Ord. No. 2943, § 1, 1-12-10)

#### 8.32.060 - Assessment of noise disturbance.

Any law enforcement officer, code enforcement officer, or other employee or official designated by the city manager or designee who hears a noise or sound that is plainly audible, as defined in Sections 8.32.030 and 8.32.040, in violation of this chapter, may enforce this chapter and shall assess the noise or sound according to the following standards:

- A. The primary means of detection shall be by means of the official's normal hearing faculties, not artificially enhanced.
- B. The official shall first attempt to have a direct line of sight and hearing to the vehicle or real property from which the sound or noise emanates so that the official can readily identify the offending source of the sound or noise and the distance involved. If the official is unable to have a direct line of sight and hearing to the vehicle or real property from which the sound or noise emanates, then the official shall confirm the source of the sound or noise by approaching the suspected vehicle or real property until the official is able to obtain a direct line of sight and hearing, and confirm the source of the sound or noise that was heard at the place of the original assessment of the sound or noise.
- C. The official need not be required to identify words, song titles, artists, or lyrics in order to establish a violation.

(Ord. No. 2943, § 1, 1-12-10)

#### 8.32.070 - Defenses.

In any prosecution for a violation of this chapter, it shall be a sufficient defense that the noise of which complaint is made resulted from reasons beyond the control of the person charged with making the noise, unless the noise is due to a reparable or otherwise curable cause which was not diligently cured or repaired; that it was necessary to make the noise to prevent injury to persons or property or that the creation or emission of the noise was done by or with a device, such as a horn, siren or muffler, installed and operated pursuant to state law and meeting the requirements thereof.

(Ord. No. 2943, § 1, 1-12-10)

#### 8.32.080 - Exemptions and waivers.

The following uses of any activity shall be exempt from noise level regulations:

- A. **Emergency Exemption.** 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, or (2) the emission of sound in the performance of emergency work performed by authorized personnel for the purpose of securing the immediate health and safety of the public.
- B. **Warning Devices.** 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.
- C. **Outdoor Activities.** The provisions of this chapter shall not apply to outdoor gatherings, public dances, shows and sporting and entertainment events, provided such events are conducted pursuant to a permit or license issued by the city relative to the staging of the events.
- D. Any noise resulting from activities of a temporary duration permitted by law and/or for which a waiver has been granted by the director.

- E. The unamplified human voice, except as provided for in Section 8.32.040(I) (Yelling and Shouting).
- F. Bells, chimes, carillons while being used for religious purposes or in conjunction with religious services, or for national celebrations or public holidays.
- G. Scheduled stadium events, subject, however, to frequency and time limitations, parades, school activities, including band practice sessions.
- H. Refuse collection trucks, provided the trucks do not collect refuse between the hours of nine p.m. and five a.m.
- I. Permitted construction during daytime hours.
- J. Federal or State Preempted Activities. Any other activity to the extent regulation thereof has been preempted by state or federal law shall be exempted from the regulations of this chapter.
- K. Any activity by the city or any governmental entity.
- L. Any activity that is protected by the First Amendment, provided that it takes place during daytime hours, except subject to time, place manner restrictions and/or any regulations imposed by a required or issued permit for such activity.

(Ord. No. 2943, § 1, 1-12-10)

#### 8.32.090 - Thirty-day waivers.

- A. Any person seeking a waiver pursuant to this section shall file an application with the director. The application shall contain information which demonstrates that bringing the source of sound or activity for which the waiver is sought into compliance with this chapter would constitute an unreasonable hardship on the applicant, on the community, or on other persons. The application shall be accompanied by a fee, as established by council resolution.
- B. A separate application shall be filed for each noise source; provided, however, that several mobile sources under common ownership, or several fixed sources on a single property may be combined into one application.
- C. Before a waiver application can be considered, the applicant must show proof that he/she has provided notice of the waiver application to all affected persons within a four-foot radius of the anticipated noise source.
- D. Any individual who claims to be adversely affected by allowance of the waiver may file a statement with the director containing any information to support his or her claim. If at any time the director finds that a sufficient controversy exists regarding an application, a public hearing will be held.
- E. In determining whether to grant or deny the application, the director shall balance denial as a hardship on the applicant against: (1) the adverse impact on the health, safety and welfare of other persons affected; (2) the adverse impact on property affected; and (3) any other adverse impacts of granting the waiver. Applicants and persons contesting the waiver shall be required to submit such information as the director may reasonably require.
- F. A waiver shall be denied if the director determines that the balance of hardships weighs against the applicant and that granting the waiver shall substantially adversely impact the health, safety and welfare of other persons affected, including the quiet enjoyment of property. The decision on the waiver application shall be in writing, explaining the reasons therefor. The notice of denial shall issue within ten days of the application.
- G. Waivers shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. Acceptance of the waiver implies acceptance of any conditions imposed. Noncompliance with any condition of the waiver shall terminate the waiver and subject the person holding it to those provisions of this chapter for which the waiver was granted. Notification that a waiver has been granted shall issue in writing within ten days of the application.
- H.

A waiver will not exceed thirty days from the date on which it becomes effective. Any request for extension of time to a waiver beyond the original thirty days or for modification of other material conditions of the waiver shall require a new application.

(Ord. No. 2943, § 1, 1-12-10)

#### 8.32.100 - Special events not subject to waiver requirement.

A special event scheduled to take place either on public or private property is exempt from the requirement of obtaining a noise disturbance waiver, provided the special event is not scheduled to last more than forty-eight hours. Notwithstanding this exemption, the organizer or sponsor of an event must obtain and comply with any and all necessary city permits.

(Ord. No. 2943, § 1, 1-12-10)

#### 8.32.110 - Request for appeal hearing.

Any person may contest the denial of a waiver by submitting a written request to the city manager for an appeal hearing, clearly stating the reasons for the appeal, within ten days from the date of service of the denial notice. A hearing before the city manager shall be set for a date that is not less than five, nor more than twenty days from the date the request for hearing is filed. The person requesting the hearing (the appellant) shall be notified of the time and place set for the hearing at least five days prior to the date of the hearing.

(Ord. No. 2943, § 1, 1-12-10)

#### 8.32.120 - Appeal hearing process.

- A. No hearing to contest the denial of a waiver before the city manager shall be held unless and until a written request for a hearing has been timely submitted and any applicable fines have been deposited.
- B. The city manager shall only consider evidence that is relevant to whether the grounds for the denial of the waiver are valid and supported by evidence.
- C. The appellant shall be given the opportunity to testify and present witnesses and any relevant evidence concerning the denial of the waiver.
- D. The formal rules of evidence shall not apply. All relevant evidence may be considered, and the city manager has the discretion to exclude evidence if he/she finds such evidence to be irrelevant or needlessly repetitive. The city manager has the authority to cut off presentation of evidence if he/she reasonably believes that the evidence being presented is irrelevant or needlessly repetitive.
- E.
  1. The failure of the appellant to appear at the appeal hearing shall be considered an abandonment of the appeal and consent to its denial.
  2. Notwithstanding the above, upon a showing of good cause by the appellant, the city manager may excuse the appellant's failure to appear at the hearing and reschedule the hearing. Under no circumstances shall the hearing be rescheduled more than one time.
- F. The notice of denial of the waiver and any additional documents submitted by the director shall constitute prima facie evidence of the respective facts contained in those documents.
- G. At least five days prior to the hearing, the appellant shall be provided with copies of reports and any other documents submitted or relied upon by the director. No other discovery disclosure is required.
- H. The city manager may continue the hearing and request additional information from the director or the appellant prior to issuing a written decision.

(Ord. No. 2943, § 1, 1-12-10)

#### 8.32.130 - City manager's decision—Right to judicial review.

- A. After considering all of the testimony and evidence submitted at the hearing, the city manager shall issue a written decision to sustain or overrule the denial of the waiver and shall list in the decision the reasons for that decision. The decision of the city manager shall be final.
- B. If the decision is to overrule the denial, suspension or revocation, then the director shall issue the waiver within ten days of the service of the decision.
- C. The time for a challenge to the city manager's decision in a court of law is governed by California Code of Civil Procedure Sections 1094.5 and 1094.6. Notice of the city manager's decision shall include citation to California Code of Civil Procedure Sections 1094.5 and 1094.6.
- D. The city manager's written decision shall be served on the appellant within ten days from the date of the hearing by mailing to the appellant by certified mail, return receipt requested, via the U.S mail. Service of the hearing officer's decision shall be deemed to have been completed on the date of mailing.

(Ord. No. 2943, § 1, 1-12-10)

#### 8.32.140 - Exceptions for time to comply.

- A. Within ninety days following the effective date of this chapter, the owner of any commercial or industrial activity, which is the source of sound that constitute a violation of this chapter, may apply to the director for an exception to the time to comply with the provisions of this chapter. The director shall have the authority to grant an exception not to exceed one hundred eighty days from the effective date of this chapter.
- B. Appeals. Appeals of an adverse decision under this section shall be made to the city manager. The city manager's review shall be limited to whether the decision is supported by substantial evidence. The appeal procedures outlined in this chapter shall apply to appeals under this section.

(Ord. No. 2943, § 1, 1-12-10)

#### 8.32.150 - Violation—Enforcement and penalties.

- A. A violation of this chapter shall be punished as prescribed in Section 1.08.010.
- B. A violation of this chapter is hereby declared to be a public nuisance, which may be abated by the city in the manner provided by the laws of the State of California and the ordinances of this city for the abatement of a public nuisance, and the city shall also have all rights provided by such laws and ordinances to recover damages suffered from any such nuisance and to recover from the owner of the property upon which such nuisance is located the cost of any abatement thereof by the city.
- C. Joint and Several Responsibility. In addition to the person causing the offending sound, the owner, tenant or lessee of property, or a manager, overseer or agent, or any other person lawfully entitled to possess the property from which the offending sound is emitted at the time the offending sound is emitted, shall be responsible for compliance with this chapter if the additionally responsible party knows or should have known of the offending noise disturbance. It shall not be a lawful defense to assert that some other person caused the sound. The lawful possessor or operator of the premises shall be responsible for operating or maintaining the premises in compliance with this chapter and may be cited regardless of whether or not the person actually causing the sound is also cited. Notwithstanding the foregoing, an owner, manager, overseer or agent of property from which offending sound is emitted and who does not reside on such property shall not be cited for violation of the provisions of this chapter unless such owner, manager, overseer or agent has previously been informed in writing by a law enforcement officer, code enforcement officer, or other employee or official designated by the city manager or designee of the existence of an offending noise disturbance on the property, and such disturbance continues, occurs again or is otherwise not reasonably or fully rectified or brought into compliance with this chapter.

(Ord. No. 2943, § 1, 1-12-10)