

Chapter 213 - NOISE ABATEMENT

Sections:

V-213-1 - Declaration of Intent

The Council finds and declares that excessive sound and excessive vibration caused by sound are a hazard to public health and welfare, safety and the quality of life in residential areas; that persons living in residential areas are entitled to the reasonable use and enjoyment of their property without exposure to excessive sound and vibration; that everyone's right to use and enjoy their property must be exercised with respect to the right of their neighbor to use and enjoy their property; that the regulation of excessive sound and vibration in residential areas of the City of Milpitas is necessary to accomplish this purpose.

(Ord. No. 196.11, § 2, 6/3/14; Ord. 196 (part), 6/7/77)

V-213-2 - Definitions

2.01 "Ambient Noise Level" as used herein in this Chapter means the continuous equivalent-energy level (Leq) measured for a minimum of three minutes, or until the Leq remains within a one dB spread, and with the noise issue at silent. If the measuring instrument does not integrate the Leq instantaneously, the ambient shall be the average noise level displayed on the meter.

2.02 "Construction Site" as used herein in this Chapter means any site preparation, assembly, erection, substantial repair, alteration or similar action on any property.

2.03 "Decibel (dB)" as used herein in this Chapter means a unit for measuring the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micro-pascals.

2.04 "Disturbing Noise" as used herein in this Chapter means any sound or vibration caused by sound which occurs with such intensity, frequency or in such a manner as to disturb the peace and quiet of reasonable person of normal sensitivity residing in that area. It shall include, but not be limited to noise from the following sounds (this enumeration not being exclusive but only illustrative):

- (1) The use, operation, playing of any radio, television, musical instrument or instruments, phonograph, stereo, loud speaker, sound amplifier or other device for the production or reproduction of sound with louder volume than is necessary for hearing for any person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto.
- (2) The sounding of any horn or signal device or siren except as a danger warning.
- (3) The operation of any machinery or tool.
- (4) The continuous or recurrent acceleration of a motor vehicle or other engine while stationary ("revving" the engine).
- (5) Yelling, shouting, hooting, whistling, singing, or similar types of noise.

2.05 "Emergency" as used herein in this Chapter means any occurrence or set of circumstances involving actual or imminent physical danger, crisis, trauma, or property damage which demands immediate action.

2.06 "Equivalent Energy Level (Leq)" as used herein in this Chapter means the level of a steady state of noise that has the same sound energy as a given time-varying noise.

2.07 "Holiday" as used in this Chapter means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

2.08 "Person" as used herein in this Chapter means any individual, association, partnership, corporation or other private or public entity.

2.09 "Weekdays" as used herein in this Chapter shall mean any Monday through Friday that is not a Holiday as defined herein.

2.10 "Weekends" as used herein in this Chapter shall mean Saturdays and Sundays that are not Holidays as defined herein.

(Ord. No. 196.11, § 2, 6/3/14; Ord. 196.6 (part), 3/17/98; Ord. 196.5 (part), 10/7/97; Ord. 196 (part), 6/7/77)

V-213-3 - Unlawful to Create or Permit Disturbing Noise

(a) Residential Zone Regulations.

3.01 It shall be unlawful for any person in any district zoned for residential use (under the provisions of Chapter 10, Title XI of the Milpitas Municipal Code) to make, continue, maintain, permit or cause to be made, continued, maintained, or permitted any Disturbing Noise that increases the noise exposure level by three dB over the local ambient noise level measured from the property line of the noise source, or more than 65 dB measured from the property line of the noise source, whichever is more restrictive.

3.02 It shall be unlawful for any person who owns, possesses, or controls any real property in any district zoned for residential use (under the provisions of Chapter 10, Title XI of the Milpitas Municipal Code) to make, continue, maintain, permit or cause to be made, continued, maintained or permitted any Disturbing Noise that increases the noise exposure level by three dB over the local ambient noise level measured from the property line of the noise source, or more than 65 dB measured from the property line of the noise source, whichever is more restrictive.

3.03 Notwithstanding any other provision of this Chapter and in addition thereto, it is unlawful for any person or any person who owns, possesses, or controls real property in any district zoned for residential use (under provisions of Chapter 10, Title XI of the Milpitas Municipal Code) to make, continue, maintain, permit, or cause to be made, continued, maintained or permitted any Disturbing Noise. It shall be prima facie violation of this Section if any Disturbing Noise is audible during the hours of 10:00 p.m. to 7:00 a.m. from a distance of 50 feet from the property line of the noise source or from a distance of 100 feet from any nonstationary noise source. It shall also be prima facie violation of this Section if any Disturbing Noise is audible during the hours of 7:01 a.m. to 9:59 p.m. from a distance of 100 feet from the property line of the noise source or any nonstationary noise source.

3.04 The above prohibition against making, continuing, maintaining or permitting any Disturbing Noise in any district zoned for residential use shall not apply to the authorized collection of solid waste, recyclables, and/or yard trimmings by an authorized collector beginning at 6:00 a.m.

(b) Site Construction Regulations.

3.05 No person shall engage or permit others to engage in construction of any building or related road or walkway, pool or landscape improvement or in the construction operations related thereto, including, delivery of construction materials, supplies, or improvements on or to a construction site except within the hours of 7:00 a.m. to 7:00 p.m. on weekdays and weekends. No construction work shall be conducted or performed on the holidays indicated in Section V-213-2-2.05 of this Chapter.

3.06 Exemption from Off-Site Construction Regulations. Exempt from the Off-Site Construction Regulations of this article are as follows:

- (1) Emergency construction and repair that is necessary for protection of life and property,
- (2) Operation preempted from local regulation by state law, such as construction of public school buildings,
- (3) Furnishing utility-type service including construction and maintenance of utility facilities,
- (4) Any work on an existing single-family or duplex (two-family) dwelling undertaken by the property owner,
- (5) Operation to construct and maintain facilities within the public right-of-way as deemed necessary by the Public Works Director, and
- (6) Any other circumstances where the City Manager deems that an exemption would be appropriate.

(Ord. No. 196.11, § 2, 6/3/14; Ord. No. 196.10, §§ 2, 3, 4-7-09; Ord. 196.6 (part), 3/17/98; Ord. 196.5 (part), 10/7/97; Ord. 196.4, 12/5/95; Ord. 196 (part), 6/7/77)

V-213-4 - Public Nuisance

The Council finds and declares that a violation of this Chapter shall constitute a public nuisance.

(Ord. No. 196.11, § 2, 6/3/14)

Editor's note— Ord. No. 196.11, § 2, adopted June 3, 2014, amended the Code by repealing former V-213-4 in its entirety, and adding a new V-213-4. Former V-213-4 pertained to determination of violation, and derived from Ord. No. 196, adopted June 7, 1977; and Ord. No. 196.5, adopted October 7, 1997.

V-213-5 - Violation as Infraction

In addition to such other remedies as are provided by law, the violation of this Chapter may constitute an infraction under the provisions of I-1-4.09-1, I-1-4.09-2 and I-1-4.09-3 of the Milpitas Municipal Code.

(Ord. No. 196.11, § 2, 6/3/14)

Editor's note— Ord. No. 196.11, § 2, adopted June 3, 2014, amended the Code by repealing former V-213-5 in its entirety, and adding a new V-213-5. Former V-213-5 pertained to similar subject matter, and derived from Ord. No. 196, adopted June 7, 1977.

V-213-6 - Abatement Authorized

In addition to such other remedies as are provided by law, the City Attorney shall be empowered to maintain an action for the abatement of said nuisance upon order of the City Council.

(Ord. 196 (part), 6/7/77)

V-213-7 - Public Hearing

In addition to such other remedies as are provided by law, the City Council shall be empowered to hold a public hearing to enable any person whose acts are alleged to be a nuisance within the meaning of this Chapter to show cause why the City Attorney should not be empowered to institute an abatement proceeding. Any person or persons desiring the Council to hold such a hearing shall file with the City Clerk at least two (2) declarations under penalty of perjury meeting the requirements of Section V-213-8 of this Chapter. Notice to the person whose acts are alleged to be a nuisance shall be given by the City Clerk by regular mail at his address as indicated in said declaration or declarations at least ten (10) days before the scheduled hearing of the City Council. Copies of said notice shall also be sent by regular mail to the declarant or declarants at the address indicated in said declaration or declarations.

(Ord. 196 (part), 6/7/77)

V-213-8 - Declarations

The declarations to be filed pursuant to the provisions of Section V-213-7 of this Chapter shall meet the following requirements:

- (a) Each declaration shall be under penalty of perjury.
- (b) Each declaration shall state the name and address of the person whose acts are alleged to be a nuisance and shall state the nature of said acts and the time and place of their commission.
- (c) Each declaration shall state that the acts so alleged to be a nuisance occurred with such frequency or in such manner as to disturb the peace and quiet of declarant.
- (d) Each declaration must be signed by a different person residing in a different household, giving the address of the declarant.

(Ord. 196 (part), 6/7/77)

V-213-9 - Abatement Procedure Optional

The provisions of Sections V-213-7 and V-213-8 are permissive and optional with the City Council. Said provisions are not a condition precedent to the issuance of a citation by any police officer or the filing of a complaint by the City Attorney for an infraction for the violation of the provisions of this Chapter. Neither the institution of a hearing before the City Council, the conclusion of said hearing or a decision of the City Council shall, in any way, abate any pending provisions of this Chapter. It is the intent of this Chapter to provide an alternative discretionary and independent remedy in favor of the City Council to determine an appropriate course of action in the future with regard to a nuisance maintained in violation of the provisions of this Chapter.

(Ord. 196 (part), 6/7/77)

V-213-10 - Notice of Personal Liability for Cost of Extraordinary Police Services

- (a) When any loud or unruly assemblage occurs or is held, and the City's law enforcement agency is required to respond to the scene other than for routine police assistance calls, and the senior police officer at the scene determines that there is a threat to the public peace, health, safety or general welfare, then that senior officer shall notify the owner of the premises or the person in charge of the premises or the person responsible for the assemblage that that person, or if that person is a minor, that the parents and guardians of that person will be held personally liable for the costs of providing police personnel to control loud or unruly assemblies over and above the normal services provided by the Police Department to those premises.
- (b) Said person or persons shall be given a first verbal warning, in the form of notification by a police officer that the police response shall be deemed to be the normal police services provided.
- (c) The police personnel utilized after the first warning to control the threat to the public peace, health, safety or general welfare shall be deemed to be on special loud or unruly assembly assignment over and above the normal services provided.
- (d) The accounting and billing procedures as set forth in Section V-213-11.00 below shall apply.

(Ord. 196.1 (part), 6/18/91)

V-213-11.00 - Fees and Costs for Extraordinary Police Services

- (a) The costs of the extraordinary police services described in Section V-213-10.01 shall include personnel and equipment costs expended during the second and any subsequent returns to the premises. Fees and costs shall be established by resolution of the City Council, and shall not exceed the reasonable cost of providing such services. In addition, such costs may include damages to City property and/or injuries to City personnel.
- (b) All fees and charges levied for City services described in Section V-213-10.01 shall be due and payable upon presentation.
- (c) All fees and charges for such services shall constitute a valid and subsisting debt in favor of the City and against the person to whom such services are rendered, and an immediate cause of action shall accrue to the City for collection thereof in any court of competent jurisdiction.

(Ord. 196.1 (part), 6/18/91)

V-213-11.01 - Remedies

Collection pursuant to this division is not intended to be the exclusive remedy, either criminal or civil, available to the City relating to the circumstances which gave rise to the need for police response under this division.

(Ord. 196.1 (part), 6/18/91)

V-213-11.02 - Notice and Hearing to Determine Reasonableness of Charge

- (a) The person or persons charged pursuant to this division shall have five (5) days after service of the bill to file a written request with the Chief of Police for a hearing to determine the reasonableness of the charge.
- (b) Upon receipt of such request, the Chief of Police or his/her duly authorized representative shall give to the requesting party or parties not less than seven (7) days written notice of the time and place of the hearing to determine the reasonableness of the fees and charges.
- (c) The hearing shall be conducted by the Chief of Police or his or her duly authorized representative, who shall act as the hearing officer. An authorized representative shall consider all relevant evidence, including but not limited to, applicable staff reports. He or she shall give any interested person a reasonable opportunity to be heard in conjunction therewith. Based upon the evidence so presented, the Chief of Police or his or her duly authorized representative shall determine the reasonableness of the fees and charges imposed.
- (d) The decision of the Chief of Police or his or her duly authorized representative shall be final and conclusive in the absence of an appeal as provided in this division.
- (e) The Chief of Police or his or her duly authorized representative shall, within five (5) working days of his or her decision, give written notice of the decision to the person or persons who requested the hearing and to any other person requesting such notice.

(Ord. 196.1 (part), 6/18/91)

V-213-11.03

Any person aggrieved by the decision of the Chief of Police or his or her duly authorized representative may appeal in accordance with the procedures set forth in Title I, Chapter 20, Section 5 of the Milpitas Municipal Code.

(Ord. 196.1 (part), 6/18/91)

V-213-12.00 - Alarm System Regulations

V-213-12.01 - Definitions

For the purpose of this Section, unless the context indicates otherwise, certain words and phrases used in this Section are defined as follows:

- (a) "Alarm system" means any mechanical or electrical device which is designed or used for the detection of an unauthorized entry into a building, structure or facility, or upon land, or for alerting others of the commission of an unlawful act within a building, structure or facility, or upon land; and which emits a sound or transmits a signal or message when actuated. Alarm systems include, but are not limited to, automatic telephone dialing devices, hard lines, audible alarms and proprietor alarms. Devices which are not designed or used to register alarms that are audible, visible or perceptible outside of the protected land, building, structure or facility are not included within this definition, nor are auxiliary devices installed by the telephone company to protect telephone company systems which might be damaged or disrupted by the use of an alarm system.
- (b) "Audible alarm" means a device designed for the detection of unauthorized entry on premises which generates an audible sound on the premises when it is actuated.
- (c) "Automatic telephone dialing device" means a device which is interconnected to a telephone line and is programmed to select a predetermined telephone number and transmit by voice message or digital signal an emergency message indicating a need for emergency response.
- (d)

"False alarm" means a report received by the Police Department from any source resulting in a response by the Police Department to the premises on which an alarm system is located, where an emergency situation does not exist.

- (e) "Hard line" means a telephone or other line leading directly from the premises protected by an alarm device, or from an alarm central station to the City's communication center where said line is used solely to report the existence of circumstances necessitating police response.
- (f) "Proprietor alarm" means an alarm which is not serviced by an alarm business.
- (g) "Responsible party" means any person, firm, partnership, company, association or corporation, or school district, or any owner or lessee of premises on which an alarm system is installed or maintained, or the agent or representative of the above, which or who utilizes an alarm system on premises located within the City of Milpitas.
- (h) "Premises" means any private residential, commercial or industrial land and/or buildings located within the City of Milpitas including school districts (excluding land or buildings owned, rented or leased by the federal, state or local government).
- (i) "Ninety- (90-) day period" means the period of time commencing upon the occurrence of a first false alarm, and terminating ninety (90) consecutive days thereafter.
- (j) "First false alarm" means the first occurrence in which the Police Department responds to the premises and there is a false alarm as defined in this Chapter.

(Ord. 196.2 (part), 2/19/91)

V-213-12.02 - Automatic Telephone Dialing Device Prohibited

It is unlawful for any person to use or cause to be used any electrical or mechanical device or attachment to a telephone that automatically reports a taped or other recorded message of a police or fire emergency direct to a City communication center. Each such call shall be deemed a separate violation punishable as a misdemeanor.

(Ord. 196.2 (part), 2/19/91)

V-213-12.03 - Audible Alarm Requirements

- (a) No audible alarm shall be installed, maintained or activated which emits the sound of a siren similar to those utilized on emergency vehicles or for air-raid/disaster warnings.
- (b) Every audible alarm system shall have a sign or notice posted on or near the audible device with the name and telephone number of the person or company responsible for the maintenance of the system. The notice shall be posted in such a position as to be readable from the ground level outside and adjacent to the building. The alarm business or person responsible for the maintenance or the system and the owner of the audible alarm shall be responsible for deactivating any alarm within thirty (30) minutes after notification that such alarm is activated and ringing, or within thirty (30) minutes after reasonable efforts have been made to provide such notification.
- (c) Every audible alarm installed after the adoption of this Chapter shall have a timing device which automatically shuts off the alarm within fifteen (15) minutes after the alarm is activated. Every audible alarm installed prior to the adoption of this Chapter without such a timing device shall be required to have such a device installed if any activated alarm is not deactivated within the thirty (30) minute time limit set forth in subsection (b) of this Section.

(Ord. 196.2 (part), 2/19/91)

V-213-12.05 - False Alarms

- (a) No responsible party of any premises within the City of Milpitas shall be penalized for the occurrence of three false alarms at said premises within any one-year period.
- (b)

No responsible party of any premises within the City of Milpitas shall have or permit any fourth or subsequent false alarm at the same premises within the one-year period after a third false alarm has been responded to by the Police Department. A service charge shall be assessed against the responsible party for every false alarm occurring after the third false alarm within the one-year period.

- (c) There is hereby imposed a service charge upon every owner who reports, causes to be or permits to be reported, a false alarm which is responded to by the Police Department. Said service charge shall be set by resolution of the City Council of the City of Milpitas and such charge shall reasonably reflect the costs to the City of responding to such false alarms.
- (d) The City Manager or his designee is empowered and authorized to enforce the provisions of this Chapter. A notice of assessment of the service charge, which notice shall describe the date and time of the alleged false alarm, and whether police personnel responded thereto, shall be sent to the owner of the premises where the false alarm occurred.
- (e) In the event of the failure of any person to pay the charges assessed pursuant to the provisions of this Chapter, the City may institute an action in any court of competent jurisdiction to collect any charges which may be due and payable in the same manner as any other debts owing to the City may be collected.

(Ord. 196.7 (part), 3/3/98; Ord. 196.2 (part), 2/19/91)

V-213-12.06 - Nuisance Alarm

- (a) An alarm shall be deemed a nuisance alarm and a public nuisance when it has been emitting sound continuously for at least one (1) hour, or intermittently for two (2) hours, and has been reported to the Police Department as an annoyance by a person in the vicinity of the alarm, and its owner is not available to silence the alarm or to cause it to be silenced.
- (b) An alarm system shall be deemed a nuisance alarm and a public nuisance if such alarm system actuates excessive false alarms. Four (4) false alarms in any ninety (90) day period is hereby found and determined to be an excessive number of false alarms at any given location.
- (c) Any officer or police aide of the Police Department, or private alarm service contractor hired by the City is authorized to enter on exterior private property areas, for the purpose of silencing a nuisance alarm. Forcible entry may be made into vehicles, exterior alarm equipment boxes, and attics and crawl space vents, in order to accomplish this purpose.
- (d) Neither the City, nor its police officer or police aide, nor any officer or employee of the City or of a private alarm service contractor engaged by the police shall be liable in damage or loss to the owner of a nuisance alarm for silencing the nuisance alarm or for entry on the owner's property for the purpose of silencing a nuisance alarm or for any damage resulting from reasonable efforts to silence the nuisance alarm.
- (e) The costs of the private alarm service contractor described above shall be due and payable upon presentation. All charges shall constitute a valid and subsisting debt in favor of the City and against the person for whom such services are rendered, and an immediate cause of action shall accrue to the City for collection thereof in any court of competent jurisdiction.

(Ord. 196.2 (part), 2/19/91)

V-213-12.07 - Notice and Hearing to Determine Reasonableness of Charge

- (a) The person or persons charged pursuant to this Division shall have five (5) days after service of bill to file a written request with the Chief of Police for a hearing to determine the reasonableness of the charge.
- (b) Upon receipt of such request, the Chief of Police or his/her duly authorized representative shall give to the requesting party or parties not less than seven (7) days written notice of the time and place of the hearing to determine the reasonableness of the fees and charges.
- (c) The hearing shall be conducted by the Chief of Police or his or her duly authorized representative, who shall act as the hearing officer. An authorized representative shall consider all relevant evidence, including but not limited to, applicable staff reports. He or she shall give any interested person a reasonable opportunity to be

heard in conjunction therewith. Based upon the evidence so presented, the Chief of Police or his or her duly authorized representative shall determine the reasonableness of the fees and charges imposed.

- (d) The decision of the Chief of Police or his or her duly authorized representative shall be final and conclusive in the absence of an appeal as provided in this Division.
- (e) The Chief of Police or his or her duly authorized representative shall, within five (5) working days of his or her decision, give written notice of the decision to the person or persons who requested the hearing and to any other person requesting such notice.

(Ord. 196.3 (part), 9/17/91)

V-213-12.08 - Appeal

Any person aggrieved by the decision of the Chief of Police or his or her duly authorized representative may appeal in accordance with the procedures set forth in Title I, Chapter 20, Section 5 of this Code.

(Ord. 196.3 (part), 9/17/91)