

**ORDINANCE NO. 2649**

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE CODE OF GILBERT, ARIZONA, CHAPTER 15 SPECIAL EVENTS, ARTICLE II PERMITS, SECTION 15-40 PROHIBITED SPECIAL EVENT CONDUCT; REVOCATION; CHAPTER 42 OFFENSES AND ABATEMENT OF PUBLIC NUISANCES, ARTICLE III OFFENSES INVOLVING PUBLIC PEACE AND ORDER, DIVISION 1 GENERALLY, SECTIONS 42-61 NOISE, 42-62 SPECIAL NOISE SOURCES, AND 42-64 UNNECESSARY NOISE, 42-65 PENALTIES RELATED TO NOISE CONTROL REGULATIONS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING PENALTIES.

WHEREAS, the Town of Gilbert Town Council finds that unreasonable noise interferes with the comfortable and quiet enjoyment of life and property, degrades the environment, and interferes with the well-being, tranquility, and privacy of the home.

WHEREAS, the Town of Gilbert Town Council has determined that the Town of Gilbert Municipal Code does not adequately regulate the emission of noise within the Town and fails to provide sufficient enforcement authority;

WHEREAS, the Town of Gilbert Town Council finds that the effective control and the elimination of unreasonable noise are essential to the health and welfare of the Town's inhabitants and visitors;

WHEREAS, the Town of Gilbert Town Council has determined that it is in the best interest of the Town to amend certain sections of the Town of Gilbert Municipal Code to provide better noise control regulations, enhance the Town's ability to respond effectively to noise-related complaints, and provide an adequate deterrent by adopting criminal penalties. .

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

The Code of Gilbert, Arizona, Chapter 15 Special Events, Article II Permits, Section 15-40 Prohibited special event conduct; revocation, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**Sec. 15-40. - Prohibited special event conduct; revocation.**

(a) The following prohibitions shall apply to all special events:

- (1) It shall be unlawful for any person in charge of, or responsible for the conduct of, a duly permitted special event to knowingly fail to comply with any condition of the permit;
  - (2) It shall be unlawful for any person to engage in any special event activity that would constitute a substantial hazard to the public safety or that would materially interfere with or endanger the public peace or rights of residents to the quiet and peaceful enjoyment of their property;
  - (3) It shall be unlawful for any person participating in a special event to utilize sound amplification equipment ~~at decibel levels that exceed those limits imposed by~~ IN VIOLATION OF sections 42-621 through 42-65 herein unless specifically authorized by the permit; and
  - (4) It shall be unlawful for any person to ride, drive, or cause to be ridden or driven any animal or any animal-drawn vehicle upon any public street, unless specifically authorized by the permit.
- (b) The parks and recreation director shall have the authority to revoke a special event permit instantly upon violation of the conditions or standards for issuance as set forth in this section or when a public emergency arises where the police resources required for that emergency are so great that deployment of police services for the special event would have an immediate and adverse effect upon the welfare and safety of persons or property.

The Code of Gilbert, Arizona, Chapter 42 Offenses and Abatement of Public Nuisances, Article III Offenses Involving Public Peace and Order, Division 1 Generally, Section 42-61 Noise, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**Sec. 42-61 - Noise**

\* \* \*

- (b) *Definitions.* The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*"A" band level* means the total sound level of all noise as measured with a sound level meter using a-weighting network. The unit is the dB(A).

*Ambient noise* means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources, near and far. For the purpose of this section, ambient noise level is the level obtained when the noise level is averaged over a period of 15 minutes IN COMMERCIAL AREAS AND INDUSTRIAL AREAS AND OVER A PERIOD OF 5 MINUTES IN RESIDENTIAL AREAS without inclusion of noise from isolated identifiable sources, at the location and time of day near that at which a comparison is to be made. Averaging may be done by instrumental analysis in accordance with American National Standard Specifications for Sound Level Meters S13-1971, or may be done manually as follows:

- (1) Observe a sound level meter for five seconds and record the best estimate of central tendency of the indicator needle, and the highest and lowest indications.
- (2) Repeat the observations as many times as necessary to ensure that observations are made at the beginning and the end of the ~~15-minute~~ APPLICABLE averaging period (15 MINUTES IN COMMERCIAL AREAS AND INDUSTRIAL AREAS, AND 5 MINUTES IN RESIDENTIAL AREAS) and that there are at least as many additional observations as there are decibels between the highest high indication and the lowest low indication.
- (3) Calculate the arithmetical average of the observed central tendency indications.

*COMMERCIAL AREA* SHALL MEAN AN AREA LOCATED WITHIN A COMMERCIAL ZONING DISTRICT, HERITAGE VILLAGE CENTER ZONING DISTRICT (HVC), NEIGHBORHOOD OFFICE ZONING DISTRICT (NO), GENERAL OFFICE ZONING DISTRICT (GO), GATEWAY VILLAGE CENTER ZONING DISTRICT (GVC) OR GATEWAY BUSINESS CENTER ZONING DISTRICT (GBC) PURSUANT TO THE TOWN OF GILBERT LAND DEVELOPMENT CODE.

*Community noise standards* shall mean the noise standards set forth in subsection (e)(1), ~~unless modified pursuant to subsection (e)(3).~~

*Decibel (dB)* means a sound pressure that is 20 times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure,  $20 \times 10^{-5}$  newton/meter.

*Emergency work* means any 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 restore property to a safe condition following a public calamity or work required to protect the health, safety or welfare of persons or property or work by private or public utilities when restoring utility service.

*Frequency of a function periodic in time* shall mean the reciprocal of the primitive period. The unit is the hertz and shall be specified.

**INDUSTRIAL AREA** SHALL MEAN AN AREA LOCATED WITHIN A BUSINESS PARK ZONING DISTRICT (BP), LIGHT INDUSTRIAL ZONING DISTRICT (LI) OR GENERAL INDUSTRIAL ZONING DISTRICT (GI) PURSUANT TO THE TOWN OF GILBERT LAND DEVELOPMENT CODE.

*Impulse noise* means a noise of short duration, usually less than one second, with an abrupt onset and rapid decay.

*Microbar* means a unit of pressure commonly used in acoustics and is equal to one dyne per square centimeter.

*Motor vehicles* means any self-propelled device in, upon, or by which any person or property is, or may be, transported within the Town, including but not limited to, licensed or unlicensed vehicles, automobiles, motor boats, personal water craft, minibikes, go-carts, motorized skateboards, and motorcycles.

**NON-RESIDENTIAL AREA** SHALL INCLUDE ANY AREA LOCATED WITHIN A COMMERCIAL AREA, INDUSTRIAL AREA OR OTHER AREA NOT ZONED AS A SINGLE FAMILY RESIDENTIAL ZONING DISTRICT OR MULTI-FAMILY RESIDENTIAL ZONING DISTRICT PURSUANT TO THE TOWN OF GILBERT LAND DEVELOPMENT CODE.

*Period of a periodic quantity* shall mean the smallest increment of time for which the function repeats itself.

*Periodic quantity* means oscillating quantity, the values of which recur for equal increments of time.

**PERSON** MEANS AN INDIVIDUAL, FIRM, ASSOCIATION, PARTNERSHIP, JOINT VENTURE OR CORPORATION. FOR THE PURPOSE OF SECTION 42-64, PERSON SHALL ALSO INCLUDE AN

OWNER OF PROPERTY, TENANT, LESSEE, MANAGER, AGENT, OR OTHER PERSON ENTITLED TO LAWFULLY POSSESS (OR WHO CLAIMS LAWFUL POSSESSION OF SUCH PROPERTY) AT THE TIME OF THE OFFENSE.

*Pure tone noise* means any noise ~~which~~ THAT is distinctly audible as a single pitch (frequency) or set of pitches as determined by the enforcement officer.

*RESIDENTIAL AREA* SHALL MEAN AN AREA LOCATED WITHIN A SINGLE FAMILY RESIDENTIAL OR MULTI-FAMILY RESIDENTIAL ZONING DISTRICT PURSUANT TO THE TOWN OF GILBERT LAND DEVELOPMENT CODE.

*Sound level (noise level) in decibels (dB)* is the sound measured with the a-weighting and slow response by a sound level meter.

*Sound level meter* means an instrument including a microphone, an amplifier, an output meter, and frequency weighting networks used to measure sound levels which satisfies the pertinent requirements in American National Standard Specifications for Sound Level Meters S1.4-1971 or the most recent revision thereof.

(c) *Exemptions.* The following uses and activities shall be exempt from noise level regulations in this Section, but may be subject to other Town regulations, including but not limited to the regulations in the Land Development Code:

(1) ~~Air conditioning~~ THE OPERATION OF AIR-CONDITIONING, pool and OR spa equipment when it is PROPERLY functioning in ~~accord~~ ACCORDANCE with manufacturer's specifications AND THE COMMUNITY NOISE STANDARDS FOR RESIDENTIAL AREAS AS SET FORTH IN SUBSECTION (e) ~~and is in proper operating condition provided that no unit may cause the noise level to exceed the residential community noise standards set forth in subsections (e)(1) and (3);~~

(2) ~~Lawn~~ THE OPERATION OF LAWN maintenance equipment IN A COMMERCIAL AREA OR INDUSTRIAL AREA, BUT ONLY IF SAID EQUIPMENT ~~when it is~~ PROPERLY functioning WITH ALL MUFFLERS AND NOISE-REDUCING EQUIPMENT in ~~accord~~ ACCORDANCE with manufacturer's specifications ~~and with all mufflers and noise-reducing equipment in use and in proper operating condition.~~ THE OPERATION OF LAWN

MAINTENANCE EQUIPMENT IN A RESIDENTIAL AREA BETWEEN 5 A.M. AND 10 P.M., BUT ONLY IF SAID EQUIPMENT IS PROPERLY FUNCTIONING WITH ALL MUFFLERS AND NOISE-REDUCING EQUIPMENT IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS. THE OPERATION OF LAWN MAINTENANCE EQUIPMENT IN RESIDENTIAL AREAS AT ALL OTHER TIMES SHALL BE SUBJECT TO THE COMMUNITY NOISE STANDARDS;

- (3) Non-amplified noises resulting from the activities such as those planned for school, governmental or community groups or duly authorized by such groups;
- (4) Noises of safety signals, warning and alarm devices, emergency generators, ~~emergency generators~~, storm warning sirens, emergency pressure relief valves or horns and the authorized testing of such equipment;
- (5) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency;
- (6) Noises resulting from emergency work as defined in subsection (b);
- (7) All noises coming from the normal operations of railroad trains;
- (8) Noises of church chimes;
- (9) Organized sporting events;
- (10) Noises created by aircraft;
- (11) Public or utility owned or operated stationary mechanical equipment so long as such equipment is properly functioning pursuant to manufacturer's specifications;
- (12) ROAD AND STREET NOISE GENERATED FROM THE NORMAL OPERATION OF TRAFFIC EXCEPT AS REGULATED HEREIN;
- (13) WORK BY OR ON BEHALF OF THE TOWN, THE STATE, OR THE FEDERAL GOVERNMENT, BETWEEN THE HOURS OF 7:00 P.M. AND 7:00 A.M., WHEN PUBLIC WELFARE AND

CONVENIENCE RENDERS IT IMPRACTICAL TO PERFORM THE WORK BETWEEN 7:00 A.M. AND 7:00 P.M.;

(14) SPECIAL EVENTS FOR WHICH A PERMIT HAS BEEN OBTAINED FROM THE TOWN, SO LONG AS SAID EVENT IS CONDUCTED IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THE PERMIT.

(d) Measurement criteria. For the purpose of enforcement of the provisions of this section, noise level shall be measured on the a-weighted scale with a sound level meter. The meter shall be set for slow response speed, except that for impulse noises or rapidly varying sound levels, fast response speed may be used. Prior to measurement, the meter shall be verified, and adjusted according to the manufacturer's specifications by means of an acoustical calibrator.

(e) Allowable noise levels.

(1) It is unlawful for any person to create any noise which would cause the noise level measured from the inside, with the windows and doors closed, of a complainant's residential dwelling, enclosed commercial building or suite, or enclosed industrial building or suite to exceed the following community noise standards for more than 15 minutes IN COMMERCIAL AREAS AND INDUSTRIAL AREAS AND FOR MORE THAN 5 MINUTES IN RESIDENTIAL AREAS ~~in duration and more than two times in one hour:~~

COMMUNITY NOISE STANDARDS		
Zone	Time	Noise Standard MAXIMUM dB(A)
Residential AREA	10:00 p.m.—5:00 a.m.	45
	5:00 a.m.—10:00 p.m.	55
Commercial AREA	10:00 p.m.—5:00 a.m.	55
	5:00 a.m.—10:00 p.m.	65
Industrial AREA	10:00 p.m.—5:00 a.m.	60
	5:00 a.m.—10:00 p.m.	70

(2) If the measurement location is on a boundary between two zoning districts, the lower noise standard shall apply.

- (3) ~~If the ambient noise level in a subdivision in a residential zoning district is measured and found at any time to be in excess of the community noise standards ABOVE, then the actual ambient noise level will be the community noise standard for that subdivision.~~

The Code of Gilbert, Arizona, Chapter 42 Offenses and Abatement of Public Nuisances, Article III Offenses Involving Public Peace and Order, Division 1 Generally, Section 42-64 Unnecessary noise, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**Sec. 42-64. Unnecessary noise IN RESIDENTIAL AREAS.**

- (a) Notwithstanding any other provision of this chapter, and in addition thereto, it shall be unlawful IN RESIDENTIAL AREAS for any person without justification to make or continue, or cause or permit to be made or continued, any unnecessary, excessive or offensive 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) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, AND IN ADDITION THERETO, IT SHALL BE UNLAWFUL IN RESIDENTIAL AREAS FOR ANY PERSON WITHOUT JUSTIFICATION TO YELL, SHOUT, MAKE UNREASONABLY LOUD AND DISTURBING NOISE, OR ALLOW ANY SUCH NOISES TO OCCUR ON ONE'S PROPERTY, BETWEEN THE HOURS OF 9:00 P.M. AND 7:00 A.M., OR AT ANY TIME SO AS TO DISTURB THE QUIET, COMFORT, OR REPOSE OF A REASONABLE PERSON OF ORDINARY SENSITIVITY. "UNREASONABLY LOUD AND DISTURBING NOISE" MEANS ANY NOISE OF SUCH CHARACTER, INTENSITY OR DURATION AS TO BE DETRIMENTAL TO THE LIFE OR HEALTH OR WELL-BEING OF ANY INDIVIDUAL IN A RESIDENTIAL AREA, OR AS TO DISTURB THE PUBLIC PEACE AND QUIET OF AN INDIVIDUAL IN A RESIDENTIAL AREA. THIS SUBSECTION APPLIES ONLY TO THOSE SITUATIONS WHERE THE DISTURBANCE IS NOT A RESULT OF THE CONTENT OF THE COMMUNICATION, BUT DUE TO THE VOLUME, DURATION, LOCATION, TIMING OR OTHER FACTORS NOT BASED ON CONTENT.

- (b)(c) The factors ~~which~~ THAT will be considered in determining whether a violation of the provisions of this section exists will include, but not be limited to, the following:
- (1) The volume of noise;
  - (2) The intensity of the noise;
  - (3) Whether the nature of the noise is usual or unusual;
  - (4) Whether the origin of the noise is natural or unnatural;
  - (5) The volume and intensity of the background noise, if any;
  - (6) The proximity of the noise to residential sleeping facilities;
  - (7) The nature and zoning of the area within which the noise emanates;
  - (8) The density of the inhabitation of the area within which the noise emanates;
  - (9) The time of the day or night the noise occurs;
  - (10) The duration of the noise;
  - (11) Whether the noise is recurrent, intermittent or constant;
  - (12) Whether the noise is produced by a commercial or noncommercial activity;
  - (13) Whether it is a pure tone noise;
  - (14) Whether it is an impulse noise.
- (d) THE EVIDENCE THAT MAY BE CONSIDERED IN DETERMINING WHETHER A VIOLATION OF THE PROVISIONS OF THIS SECTION EXISTS MAY INCLUDE ANY OF THE FOLLOWING EVIDENCE: OFFICER OBSERVATIONS, WITNESS STATEMENT, PHOTOGRAPH, VIDEO RECORDING, AUDIO RECORDING, DATA FROM A NOISE APP, NOISE NUISANCE LOG, AND ANY OTHER TYPE OF EVIDENCE AS DETERMINED BY THE OFFICER.

The Code of Gilbert, Arizona, Chapter 42 Offenses and Abatement of Public Nuisances, Article III Offenses Involving Public Peace and Order, Division 1 Generally, Section 42-65 Penalties, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

**Sec. 42-65. - Penalties.**

(a) VIOLATIONS OF SECTIONS 42-61, 42-62, AND 42-63.

~~(a)~~(1) Civil violations. Upon a finding that a person is responsible for a civil violation of ~~this division~~ SECTION 42-61, SECTION 42-62 OR SECTION 42-63, the civil hearing officer shall impose a civil sanction of not less than \$100.00 nor more than \$500.00 for each violation.

~~(b)~~(2) Habitual offender. An habitual offender is a person who commits a violation of this division after previously having been found responsible for committing three or more civil violations of this division within a 24-month period, whether by admission, by payment of the fine, by default or by judgment after hearing, a habitual offender shall be guilty of a criminal misdemeanor complaint in the town municipal court against habitual offenders who violate this division. ~~for~~ FOR purposes of calculating the 24-month period under this paragraph, the dates of the commission of the offenses are the determining factor.

(i) For habitual offenders, upon conviction of a violation of this division the court may impose a sentence of incarceration not to exceed six months in jail; or a fine not to exceed \$2,500.00, exclusive of penalty assessments prescribed by law; or both. The court shall order a person who has been convicted of violation of this division to pay a fine of not less than \$500.00 for each count upon which a conviction has been obtained. A judge shall not grant probation to or suspend any part of all of the imposition or execution of any sentence required by this subsection except on the condition that the person pays the mandatory minimum fines as proved in this paragraph.

(ii) Every action or proceeding under this division shall be commenced and prosecuted in accordance with the laws of the state relating to criminal misdemeanors and the Arizona Rules of Criminal Procedure.

- (b) VIOLATIONS OF SECTION 42-64 REGARDING UNNECESSARY NOISE IN RESIDENTIAL AREAS.
  - (i) CRIMINAL PENALTY. A PERSON WHO VIOLATES SECTION 42-64 SHALL BE GUILTY OF A PETTY OFFENSE, AND UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00). EACH DAY THAT A VIOLATION CONTINUES SHALL BE A SEPARATE OFFENSE.
  - (II) FOLLOWING THE ISSUANCE OF A WRITTEN WARNING FOR A VIOLATION OF 42-64, A SUBSEQUENT VIOLATION OF SECTION 42-64 MAY BE SUBJECT TO A PETTY OFFENSE, AND UPON CONVICTION THEREOF, THE VIOLATOR SHALL BE PUNISHED BY A FINE NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00). EACH DAY THAT A VIOLATION CONTINUES SHALL BE A SEPARATE OFFENSE.
- (c) *SAVINGS CLAUSE*. A PROSECUTION WHICH IS PENDING ON THE EFFECTIVE DATE OF THIS SECTION AND WHICH AROSE FROM A VIOLATION OF AN ORDINANCE REPEALED BY THIS SECTION, OR A PROSECUTION WHICH IS STARTED WITHIN ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION ARISING FROM A VIOLATION OF AN ORDINANCE REPEALED BY THIS SECTION, SHALL BE TRIED AND DETERMINED EXACTLY AS IF THE SECTION HAD NOT BEEN REPEALED.
- (d) *ENFORCEMENT*. THE POLICE CHIEF AND HIS/HER DESIGNEES, INCLUDING CODE ENFORCEMENT OFFICERS AS APPLICABLE, SHALL HAVE THE AUTHORITY TO ENFORCE THE NOISE REGULATIONS CONTAINED IN THIS DIVISION. NOTHING IN THIS DIVISION SHALL PREVENT OBTAINING VOLUNTARY COMPLIANCE BY WAY OF WARNING, NOTICE OR EDUCATION.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, 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.

Section IV. Providing for Penalties.

Any person found guilty of violating any provision of this Ordinance shall be subject to the penalties set forth in section 42-65 as set forth above.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this 15<sup>th</sup> day of February, 2018, by the following vote:

AYES: S.Anderson, E.Cook, J.Daniels, B.Peterson, J.Ray, J.Taylor

NAYES: None ABSENT: V.Petersen

EXCUSED: None ABSTAINED: None

APPROVED this 15<sup>TH</sup> day of FEBRUARY, 2018.

  
\_\_\_\_\_  
Jenn Daniels, Mayor

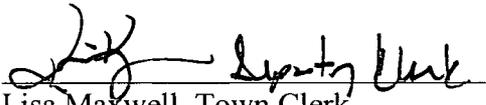
ATTEST:

  
\_\_\_\_\_  
Lisa Maxwell, Town Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Christopher W. Payne, Town Attorney

I, LISA MAXWELL, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 2649 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THE 15<sup>TH</sup> DAY OF FEBRUARY, 2018, WAS POSTED IN FOUR PLACES ON THE 27 DAY OF March, 2018.

  
\_\_\_\_\_  
Lisa Maxwell, Town Clerk