



ORDINANCE 2139

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA AMENDING THE BOZEMAN MUNICIPAL CODE REGARDING NOISE FROM CONSTRUCTION OPERATIONS INCLUDING AMENDING SEC. 16.06.020 (FINDINGS); SEC. 16.06.040 (DEFINITIONS); SEC. 16.06.060 (LOUD NOISES PROHIBITED IN RESIDENTIAL AREAS); SEC. 16.06.070 (EXCEPTIONS); SEC. 16.06.090 (ENFORCEMENT); AND ADDING A NEW SECTION FOR CONSTRUCTION OPERATIONS.

WHEREAS, on September 24, 2001, the Bozeman City Commission formally adopted [Ordinance No. 1539](#); and

WHEREAS, in making its findings in support of Ordinance No. 1539, the City Commission determined that “[l]oud and raucous noise degrades the environment of the City of Bozeman to a degree that: 1) [i]t maybe be harmful to the health, welfare, and safety of its inhabitants and visitors; 2) [i]t may interfere with the comfortable enjoyment of life and property reasonably expected in an urban environment; 3) [i]t may cause or aggravate health problems;” and

WHEREAS, since the adoption of Ordinance No. 1539, and in light of the recent increase of development occurring throughout the city, the City of Bozeman seeks to balance the needs of construction operations and the needs of residents to peacefully enjoy their property; and

WHEREAS, sound emanating from construction operations can affect an adjacent citizen’s right to the quiet enjoyment of their property.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA:

Section 1

That Section 16.06.020, Bozeman Municipal Code, will be amended as follows:

Sec. 16.06.020. Findings.

- A. Loud and raucous noise degrades the environment of the city to a degree that:
 - 1. It may be harmful to the health, welfare, and safety of its inhabitants and visitors;
 - 2. It may interfere with the quiet comfortable enjoyment of life and property reasonably expected in an urban environment;
 - 3. It may cause or aggravate health problems.
- B. Both the effective control and the elimination of loud or raucous noise are essential to the health and welfare of the citizens and visitors of the city as well as to the conduct of the normal pursuits of life, including recreation, work and communication.
- C. The use of sound amplification equipment creates loud and raucous noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace, and freedom of the citizens of and visitors to the city.
- D. Certain short-term easing of noise restrictions is essential to allow the construction and maintenance of structures, infrastructure, and other elements necessary for the physical and commercial vitality of the city.

Section 2

That Section 16.06.040, Bozeman Municipal Code, will be amended as follows:

Sec. 16.06.040. Definitions.

A. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. “Construction operations” means the excavation, construction, repair, or demolition of any building, structure, land parcel, street, alley, waterway, or appurtenance thereto using any device or mechanical apparatus operated by human, fuel, electric or pneumatic power, including but not limited to noise generated from loudspeakers on a construction site.

1.2. “Decibel” means a unit used to measure the intensity of a sound or the power level of an electrical signal by comparing it with a given level on a logarithmic scale, commonly symbolized using dB. Decibel levels shall be measured using the A-scale of an OSHA approved standards sound level meter at slow response.

2.3. "Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate attention.

3.4. "Emergency work" means any work:

- a. Performed for the purpose of preventing or alleviating physical trauma or property damage;

- b. Restoring property to a safe condition following a public calamity;
 - c. By private or public utilities when restoring utility service; or
 - d. Performed to protect persons or property from exposure to danger or potential danger.
- 4.5. "Health" means an optimal state of physical, mental and emotional well-being and not merely the absence of disease.
- 5.6. "Person" means any individual, firm, association, partnership, joint venture, corporation or public entity, including but not limited to federal, state or city government.
- 6.7. "Public right-of-way" means any street, avenue, boulevard, highway, sidewalk, alley, or similar place which is normally accessible to the public which is owned or controlled by a government entity.
8. "Public space" means any real property or structure on real property, owned by the government and normally accessible to the public, including but not limited to parks and other recreational areas. For the purposes of this article, public space will also include any property, whether publicly or privately owned, used by members of the general public as a method of ingress, egress or for parking.

Section 3

That Section 16.06.060, Bozeman Municipal Code, will be amended as follows:

Sec. 16.06.060. Loud noises prohibited in residential areas.

A. Except as authorized in ~~section~~ 16.06.070, it is unlawful to perform any of the following acts within areas of the city zoned R-1, R-2, R-3, R-4, R-O, RMH, R-S or PLI:

1. *Non-emergency signaling devices.* Sounding any horn or signaling device on any truck, automobile, motorcycle, or other vehicle, including but not limited to the use of backup beepers, except as a warning signal.

2. *Exhausts.* Discharging into open air the exhaust of any steam engine, stationary internal combustion engine, motorboat, or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises.

3. ~~*Construction projects.* Operating equipment or performing any construction or repair work on buildings, structures, streets, highways, bridges or other public rights-of-way or operating any pile driver, steam shovel, pneumatic hammer, derrick, steam electric hoist, generator, pump or other construction type device in such a manner which may disturb the quiet, comfort or repose of any normally sensitive and reasonable person.~~

4.3. *Loading, unloading or opening containers.* Loading, unloading, opening or other handling of boxes, crates, containers, garbage containers or other objects in such a manner as to disturb the quiet, comfort or repose of any normally sensitive and reasonable person.

5. 4. *Snow blowers, leaf blowers or similar devices.* Operating any noise-creating blower, power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, including but not limited to snow blowers or other snow removal

devices, leaf blowers, chainsaws, or lawnmowers in a manner which may disturb the quiet, comfort or repose of any normally sensitive and reasonable person.

~~B. The activities described in subsection A of this section are authorized in areas within the city zoned B-1, B-2, B-3, M-1, M-2, HMU, UMU and BP without restrictions set forth in section 16.06.070.~~

Section 4

That Section 16.06.070, Bozeman Municipal Code, will be amended as follows:

Sec. 16.06.070. Exceptions.

A. ~~Subject to sections 16.06.050 and 16.06.060.A.,~~ The following activities will be authorized as follows are subject to the prohibitions in 16.06.050, but are exempt from the prohibitions in 16.06.060:

1. *Non-emergency signaling devices.* Except as authorized in subsection A.32 of this section, the sounding or permitting of any sounding of amplified signals from any bell, chime, siren, whistle or similar device intended primarily for non-emergency purposes, including but not limited to back-up beepers, will be authorized at any time between the hours of 6:00 a.m. and 8:00 p.m. from October 1 through March 30 and between 6:00 a.m. and 10:00 p.m. from April 1 through September 30.

~~2. Construction projects. Operating equipment or performing any construction or repair work as defined in section 16.06.060 will be authorized between the hours of 6:00 a.m. and 8:00 p.m. from October 1 through March 30 and between 6:00 a.m. and 10:00 p.m. from April 1 through September 30. The director of public service may authorize temporary relief from this section upon application and a showing of extraordinary need for the use of this equipment beyond or outside these hours. Such authorization will clearly set forth the dates and hours of the authorized use as well as any special conditions needed to mitigate potential negative noise impacts.~~

~~3.2.~~ *Loading, unloading or opening containers.* The loading, unloading, opening or other handling of boxes, crates, containers, solid waste containers or other similar objects, including but not limited to the collection of solid waste as defined in section 32.02.010, recyclables or compostable materials by either the city or a private contractor duly licensed by the Montana Public Service Commission for the collection and transportation of solid waste will be authorized provided the parties obtain and comply with any permits required by chapter 38. Should a permit not be required, this activity is authorized between the hours of 5:00 a.m. and 8:00 p.m. from October 1 through March 30 and between 5:00 a.m. and 10:00 p.m. from April 1 through September 30.

~~4.~~ *3. Snow blowers, leaf blowers or similar devices.* The operation of any equipment as defined above will be authorized between the hours of 6:00 a.m. and 8:00 p.m. from October 1 through March 30 and between 6:00 a.m. and 10:00 p.m. from April 1 through September 30.

~~5.4.~~ *Outdoor events.* Any outdoor gatherings, public dances, shows sporting events, and other similar outdoor events will be authorized provided the parties obtain any permits required by chapter 34, article 8. Should the event not require a permit, the gathering will be authorized between the hours of 6:00 a.m. and 8:00 p.m. from October 1 through March 30 and between 6:00 a.m. and 10:00 p.m. from April 1 through September 30.

~~6.5.~~ *Outdoor activities.* Activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to the use of a city-owned park, swimming pool, skate park, ball fields, school athletic or school entertainment events.

~~7.6.~~ *Public work.* Noise created in the performance of any work in the public right-of-way or on public space as defined herein which is reasonably necessary for the public benefit, welfare, convenience or safety, including but not limited to the maintenance of streets, parking lots, water and wastewater lines but excluding solid waste activities.

B. Nothing in this section will be construed to allow activity which is prohibited under chapter 38.

Section 5

That Section 16.06.090, “Enforcement,” will be amended as follows and renumbered as Section 16.06.100:

Sec. 16.06.100. Enforcement.

A. The chief of police and the director of community development or their designee will have the ~~primary~~ responsibility for the enforcement of this article. Nothing in this article will prevent the chief of police or the director of community development or their designee from obtaining voluntary compliance by way of warning, notice or education.

B. A violation of this article will be punishable as follows:

1. First offense will be punishable by a fine of not more than \$500.00 or six months in the county jail or both;
2. Second offense occurring within one year from the conviction of the first offense will be punishable by a minimum fine of not less than \$100.00 or more than \$500.00, a maximum of six months in the county jail or both;
3. Third offense occurring within one year from the conviction of the first offense will be punishable by a minimum fine of not less than \$200.00 but in no event more than \$500.00, a maximum of six months in the county jail or both;
4. 4th offense occurring within one year from the conviction of the first offense will be punishable by a minimum fine of not less than \$350.00 but in no event more than \$500.00, a maximum of six months in the county jail or both;

5. 5th offense occurring within one year from the conviction of the first offense will be punishable by a fine of \$500.00, a maximum of six months in the county jail or both.

C. Nothing in this article will be construed to prevent or interfere with an individual's constitutional right to free speech. If a person's exercise of a constitutional right to free speech would violate this article, that person must be ordered, and have the opportunity, to move, disperse, or otherwise remedy the violation prior to arrest or a citation being issued.

D. Noise measured by trained and qualified city employees on a complainant's property in excess of 60dB(A) will be considered prima facie evidence that such noise is a violation of 16.06.090.

Section 6

That a new section of the Bozeman Municipal Code be adopted as follows:

Sec. 16.06.090 – Construction Operations.

A. Jurisdiction. This section applies to all construction operations located within the city.

B. The prohibitions in 16.06.050 are applicable to construction operations.

C. Restrictions. Noise emanating from a construction operation occurring between the hours of 8:00 PM to 7:00 AM must not exceed 60dB(A) as measured at the property line of an immediately adjacent property.

D. Permit. The director of community development or their designee may issue a permit to exempt a construction operation from the restrictions on hours and noise levels in 16.06.090(C). The director may establish permit policies and applications requirements.

1. A permit may be granted if the director determines:

i. The application contains the required supporting materials;

ii. The applicant paid the non-refundable application fee; and

iii. The application contains sufficient facts demonstrating why performing construction operations outside of the restrictions set forth in 16.06.090(C) is necessary.

2. When determining whether to approve, conditionally approve, or deny a permit, the director may consider any relevant factors including but not limited to:

a. The hours requested to exceed those listed in 16.06.090(C);

b. The location of the construction operation and proximity to residential dwellings;

c. The nature and extent of construction operations to be performed outside the hours listed in 16.06.090(C); and

d. The number of days requested.

3. The director or their designee is authorized and empowered to revoke any permit granted under the terms of this article if it becomes known to them that the

permittee is in any manner failing to comply with the terms of this article or when public convenience and safety require such revocation.

E. Appeals. An applicant may appeal the director's decision to the city manager by submitting a non-refundable appeal fee and providing the information required by the director. The appeal must be filed within five business days of the director's decision. The city manager may uphold, modify, or overturn the decision. A decision of the city manager is a final decision of the city and may be appealed to state district court.

Section 6

Repealer.

All provisions of the ordinances of the City of Bozeman in conflict with the provisions of this ordinance are, and the same are hereby, repealed and all other provisions of the ordinances of the City of Bozeman not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 7

Savings Provision.

This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance. All other provisions of the Bozeman Municipal Code not amended by this Ordinance shall remain in full force and effect.

Section 8

Severability.

That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof, other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Bozeman Municipal Code as a whole.

Section 9

Codification.

This Ordinance shall be codified as indicated in Section 1 – 6 with Section 5 of this Ordinance being amended as shown in Section 5 and renumbered 16.06.100 and Section 6 of this Ordinance being numbered as 16.06.090.

Section 10

Effective Date.

This Ordinance shall be in full force and effect thirty (30) days after final adoption.

PROVISIONALLY ADOPTED by the City Commission of the City of Bozeman, Montana, on first reading at a regular session held on the ____ day of _____, 2023.

CYNTHIA L. ANDRUS

Mayor

ATTEST:

MIKE MAAS

City Clerk

FINALLY PASSED, ADOPTED AND APPROVED by the City Commission of the City of Bozeman, Montana on second reading at a regular session thereof held on the ____ of _____, 2023. The effective date of this ordinance is _____, __, 2023.

CYNTHIA L. ANDRUS

Mayor

ATTEST:

MIKE MAAS

City Clerk

APPROVED AS TO FORM:

GREG SULLIVAN
City Attorney