ORDINANCE 5750

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, REPEALING IN ITS ENTIRETY MESA CITY CODE TITLE 6, CHAPTER 12 ENTITLED "OFFENSIVE, EXCESSIVE, AND PROHIBITED NOISES" AND REPLACING IT WITH A NEW CHAPTER 12.

WHEREAS, title 6, chapter 12 of the Mesa City Code entitled "Offensive, Excessive, and Prohibited Noises" regulates noise in the City of Mesa, Arizona (the "City").

WHEREAS, it is important to balance the needs of all businesses and residents to regulate and prevent excessive, unnecessary, or offensive sound, noise, and vibration that disrupts, jeopardizes, or is detrimental to the health, welfare, safety, comfort, repose, and quality of life of the citizens of the City.

WHEREAS, City Council recognizes that noises are part of any large urban area, such as the City, especially in industrial areas and areas near airports. The intent of this Ordinance is to make the City's noise ordinance more similar to adjacent communities. This Ordinance is not intended to affect aeronautical or industrial activities that create a level of noise a reasonable person would expect in a large metropolitan area, including the use of the City's two airports, and the ability of industries surrounding the City's airports to continue their aeronautical and industrial businesses.

WHEREAS, providing specific factors to consider when determining violations of a noise ordinance ensures the fair and effective enforcement of noise complaints.

WHEREAS, establishing a clear method of requesting a temporary exemption to noise prohibitions allows for businesses and residents to continue to participate in some activities that would otherwise be limited by ordinance.

WHEREAS, it is appropriate that a range of increasing penalties should apply to repeat violators of noise prohibitions.

WHEREAS, the City Council has determined that revisions to title 6, chapter 12 of the Mesa City Code are reasonably necessary to promote and protect the general health, safety and welfare of the citizens of the City.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1: REPEALED AND REPLACED LANGUAGE. That Mesa City Code title 6, chapter 12 entitled "Offensive, Excessive, and Prohibited Noises" is repealed in its entirety and replaced with the following language:

CHAPTER 12

OFFENSIVE, EXCESSIVE, AND PROHIBITED NOISES

SECTION:

6-12-1: PURPOSE
6-12-2: DEFINITIONS
6-12-3: GENERAL PROHIBITIONS
6-12-4: ANIMALS
6-12-5: MOTOR VEHICLES
6-12-6: GENERAL EXEMPTIONS
6-12-7: TEMPORARY EXEMPTIONS
6-12-8: PERSONS RESPONSIBLE FOR NOISE VIOLATIONS
6-12-9: ENFORCEMENT
6-12-10: PENALTY
6-12-11: HABITUAL OFFENDER

6-12-1 PURPOSE

It is the purpose of this Chapter to regulate and prevent excessive, unnecessary, or offensive sound, noise, and vibration that disrupts, jeopardizes, or is detrimental to the health, welfare, safety, comfort, repose, and quality of life of the citizens of Mesa.

6-12-2: DEFINITIONS

The following words, terms, and phrases, when used in this Chapter, whether or not the term is capitalized, shall have the meanings noted below. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. Definitions set forth in this Section apply only to this Chapter and do not affect and are not to be applied to any other Mesa City Code.

CITY MANAGEMENT: The City Manager or an Assistant City Manager or Deputy City Manager.

EMERGENCY VEHICLE: Any vehicles of (i) a governmental entity related to police, fire, public safety or public works, or (ii) a public service corporation, or fire, medical, water or sewer district.

EMERGENCY WORK: Any work performed (i) to prevent or alleviate physical trauma or property damage threatened or caused by an emergency, (ii) to restore or maintain utility services, or (iii) which is necessary to protect the health, welfare, or safety of persons or property.

RESIDENTIAL PROPERTY: Any real property developed and used for human habitation containing improvements with living facilities, including provisions for sleeping, eating, cooking, and sanitation, unless such improvements are actually occupied and used for purposes other than

human habitation.

RESIDENTIAL STRUCTURE: Any structure or dwelling developed and used for human habitation containing improvements with living facilities, including provisions for sleeping, eating, cooking, and sanitation, unless such improvements are actually occupied and used for purposes other than human habitation.

6-12-3: GENERAL PROHIBITIONS

(A) It is a violation of this Chapter for any person to make, assist in making, permit, continue, cause to be made or continued, or permit the continuance of any loud, unnecessary, or unusual sound or noise that disturbs, injures, or endangers the comfort, repose, health, peace, or safety of a reasonable person. In determining whether a sound or noise is loud, unnecessary, or unusual, the following factors will be considered in addition to any other relevant information:

(1) Volume and intensity of the sound or noise;
(2) Proximity of the source of the sound or noise to residential structures on residential property;
(3) The zoning and permitted land uses of the property or area from which the sound or noise emanates;
(4) Whether the sound or noise is recurrent, intermittent, or constant;
(5) Time of day, especially a sound or noise occurring between 10:00 p.m. and 6:00 a.m.;
(6) The volume and intensity of background noise, if any;
(7) Whether the sound or noise is enhanced in volume or range by any type of electronic or mechanical means; and
(8) Whether the sound or noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

(B) The general prohibition set forth in this Section is in addition to and independent of any specific prohibitions against sound or noise set forth in this Chapter.

6-12-4: ANIMALS

It is a violation of this Chapter for any person to own, harbor, possess, care for, permit, or keep any animal that causes or makes frequent or long and continued sound that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of a reasonable person.

6-12-5: MOTOR VEHICLES

(A) It is a violation of this Chapter to operate or cause to be operated any motor vehicle that creates any noise that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of a reasonable person including such unreasonable sounds created by grating, grinding, or rattling; or the exhaust system or engine; or other unreasonable motor vehicle sounds.

(B) It is a violation of this Chapter to operate or permit the operation of any sound amplification system in or on a motor vehicle in such a manner or with such volume that, when operated, either: (i) unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of a reasonable person; or (ii) is plainly audible at a distance of fifty (50) feet from the vehicle from which the sound is emanating.

6-12-6: GENERAL EXEMPTIONS

The following types of sound and sound generating activities are not a violation of this Chapter:

(A) Sound produced by emergency work or emergency vehicles.

(B) Sound made to alert persons to the existence of an emergency, danger, or attempted crime.

(C) Activities or operations of governmental units or agencies.

(D) Activities approved by the City for a temporary use or limited duration that receive a special event license, special use permit, or similar permit or permission, but only to the extent such license, permit, or permission specifically exempts the activity from this Chapter and subject to any limitations or conditions of the license, permit or permission.

(E) Athletic, musical or cultural activities or events (including practices and rehearsals) conducted by or under the auspices of public or private schools, including public or private colleges or universities.

(F) Construction, repair, remodeling, demolition, drilling, landscape maintenance, landscaping, lawn or yard work, wood cutting, including crafts and hobbies, or excavation work conducted between 6:00 a.m. through 8:00 p.m. Monday through Friday. A person may engage in or permit such activities at that person's residence between 6:00 a.m. and 8:00 p.m. on Saturday or Sunday. Landscape maintenance and landscaping at golf courses and private parks between 5:00 a.m. and 8:00 p.m. on all days is also exempted.

6-12-7: TEMPORARY EXEMPTIONS

(A) City Management is authorized to grant a temporary exemption from the requirements established by this Chapter if such temporary exemption for an activity would be in the public interest and there is either no feasible and prudent alternative to the activity, or method of conducting the activity.

(B) A temporary exemption request must be in writing and submitted to the Code Compliance Administrator. City Management may require the requestor to provide notice to potentially impacted property. If the exemption is granted, it shall be signed by City Management and must set forth the activity granted the exemption, the conditions and limitations of the exemption, the location, and the date(s) and time(s) for which the exemption is effective. Any approved exemption shall be on file with the Code Compliance Unit.

(C) A temporary exemption may be granted only for the period of time that is reasonably necessary to conduct the activity.

(D) The following factors shall be considered by City Management in determining whether to grant a temporary exemption:

(1) Adverse effects of granting the exemption;
(2) Proximity to residential structures;
(3) Level of the sound to be generated by the activity;
(4) Whether the type of sound to be produced by the activity is usual or unusual for the location;
(5) Density of population of the area in which the event or activity is to take place;
(6) Time of day when the activity will take place; and
(7) Nature of the sound to be produced, including whether the sound will be recurrent, intermittent, or constant.

(E) The granting of a temporary exemption is at the sole discretion of City Management and the decision of City Management shall be final.

6-12-8: PERSONS RESPONSIBLE FOR NOISE VIOLATIONS

(A) Any person that makes, assists in making, permits, continues, causes to be made or continued, or permits the continuance of sound or noise that violates this Chapter shall be deemed responsible for or guilty of the violation.

(B) If the person responsible pursuant to Subsection (A) cannot be determined, there shall be a rebuttable presumption that the owner, property manager, sponsor of the event, lessee, or occupant of the property on which the sound or noise is emanating from is responsible for or guilty of the violation.

(C) Any person in attendance who engages in conduct causing a sound or noise in violation of this Chapter shall be deemed responsible for or guilty of the violation.

6-12-9: ENFORCEMENT

The City's Police Officers, Code Compliance Officers, Animal Control Officers, Park Rangers and any other City employee or official as authorized by City Management to enforce the provisions of this Chapter.

6-12-10: PENALTY

(A) Any person who violates the provisions of this Chapter shall be responsible for a civil infraction except that habitual offenders shall be responsible for a criminal violation as provided in Section 6-12-11.

(B) Any person found responsible for a civil violation of this Chapter, whether by admission, default, or judgment after hearing, shall pay a civil sanction of not less than $250 or more than $1,500. A second finding of responsibility within twenty-four (24) months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than $500 or more than $2,500. A third finding of responsibility within twenty-four (24) months of the commission of a prior violation of this Chapter shall result in an enhanced civil sanction of not less than $750 or more than $2,500.

(C) Each violation shall be a separate offense, punishable as described herein.

6-12-11: HABITUAL OFFENDER

(A) A person who commits a violation of this Chapter after previously having been found responsible for committing a civil violation of this Chapter on three (3) separate dates within a twelve (12) month period, whether by admission, by payment of the fine, default, or judgment after hearing, shall be guilty of a class 1 criminal misdemeanor as a habitual offender. The Mesa City Prosecutor is authorized to file a class 1 criminal misdemeanor complaint in the Mesa City Court against habitual offenders. For purposes of calculating the twelve (12) month period under this Subsection (A), the dates of the commission of the offenses are the determining factor.

(B) Upon conviction of a violation as a habitual offender pursuant to Subsection (A), the court may impose a sentence or incarceration not to exceed six (6) months in jail or a fine not to exceed $2,500, exclusive of penalty assessments prescribed by law, or both. The court shall order a person convicted as a habitual offender to pay a fine of not less than $500 for each count upon which a conviction is obtained.

SECTION 2: INCORPORATION OF RECITALS. The recitals above are fully incorporated in this Ordinance by reference.

SECTION 3: EFFECTIVE DATE. The effective date of this Ordinance shall be thirty days following adoption by the Mesa City Council.

SECTION 4: MATURED RIGHTS AND DUTIES, PENALTIES OR PROCEEDINGS. 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.

SECTION 5: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or any part of the material adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 6: AGRICULTURAL EXEMPTION. Pursuant to 6-12-7, and not withstanding any limitations in 6-12-7, the City Management is authorized to grant a standing exemption as needed and without request for agricultural activities such as harvesting.

SECTION 7: SECTION 6-12-6(D). The phrase "specifically exempts" in 6-12-6(D) means that the license, permit, or permission must specifically reference this Chapter and must specify the nature and extent of the exemption. In the absence of such specificity, no exemption shall exist under 6-12-6(D). All existing licenses, permits, and permissions in effect at the time this Ordinance takes effect are subject to this Chapter, including 6-12-6(D), as set forth in this Ordinance.

SECTION 8: SECTION 6-12-3(A)(3). For the purposes of enforcement, the consideration required by the 6-12-3(A)(3) factor may be based on the observed use of the property or area, or any other available information to the enforcement officer, and does not require verification or confirmation of the official zoning or permitted land uses of the property or area prior to citation.

PASSED AND ADOPTED by the Council of the City of Mesa, Maricopa County, Arizona, this 1st day of December, 2022.

APPROVED:

Mayor

ATTEST:

City Clerk

CITY OF MESA CORPORATE SEAL MARICOPA COUNTY, AZ