

Ordinance 752 Series 2019
An Ordinance of The Town of Mancos, Colorado, Establishing a New Chapter 10, Article 12
Concerning Noise Regulation and Abatement

WHEREAS, the Town Board of Trustees wishes to adopt necessary rules and regulations governing noise regulation and abatement within the Town of Mancos;

WHEREAS, such rules and regulations are necessary in order to protect the public health, safety and welfare;

NOW, THEREFORE, BE IT ORDAINED by the Board of Trustees of the Town of Mancos, Colorado, that:

1. Chapter 10, Article 10, Section 10 is hereby revoked.
2. There is hereby established a new Chapter 10, Article 12, of the Mancos Municipal Code, governing noise regulation and abatement as follows:

Chapter 10, Article 12 Noise Regulation and Abatement

GENERAL

Sec. 10-12-1. - Declaration of Intent.

The Town of Mancos Board of Trustees finds and determines that the making and creating of unreasonable noise within the Town limits is a detriment to the public health, comfort, convenience, safety and welfare of the Town and may cause damage to property or business. The Town Board of Trustees finds and determines that the provisions and prohibitions contained and enacted in this Chapter are necessary for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare, and peace and quiet of the Town.

Sec. 10-12-2. - Definitions.

For purposes of this Chapter, certain words and phrases are defined as follows:

A-Weighted Sound Pressure Level means the sound pressure level as measured with a sound level meter using the A-weighting network. The standard notation is DB(A).

Construction activities means any and all activity incidental to the erection, demolition, assembling, altering, installing or equipping of buildings, structures, roads or appurtenances thereof, including land clearing, grading, excavation and filling.

Continuous noise means steady or fluctuating noise that exists essentially without interruption during the period of observation.

Decibel means a logarithmic unit of measure often used in measuring magnitudes of sound. The symbol is DB.

Device means any mechanism that is intended to, or that actually produces, audible sound when operated or handled.

Emergency work or *emergency vehicle* means work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from an imminent exposure to danger. An emergency vehicle is a vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.

Motor vehicle means any vehicle such as, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, motorcycles, mini-bikes, go-carts, snowmobiles, motorboats, racing vehicles, and other devices propelled by mechanical power.

Noise means any sound which is unwanted or which causes or tends to cause an adverse psychological or physiological effect on human beings.

Noise disturbance means any sound that annoys or disturbs reasonable persons with normal sensitivity, or which injures or endangers the comfort, repose, health, safety or peace of other persons.

Person means any human being, firm, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user, owner or operator, including any municipal corporation or its officers or employees.

Property boundary means an imaginary line at the ground surface that separates the real property owned by one person from that owned by another person, and its vertical extension.

Public right-of-way means any street, avenue, boulevard, highway, alley, premises, or public place owned or controlled by a public governmental entity.

Sound amplification system means any sound production or reproduction device, radio receiving set, loud speakers, sound amplifier or other similar machine or device for the producing or reproducing of sound.

Unreasonable noise means any sound that exceeds the maximum permissible levels set forth in sections 10-12-5 and 10-12-6, as applicable.

CLASSIFICATION AND MEASUREMENT OF NOISE

Sec. 10-12-3. - Classification and Measurement.

For purposes of determining and classifying any noise as unreasonable the following measurement must be applied:

- (1) Noise occurring within the jurisdiction of the Town shall be measured at the approximate property boundary of the property affected by the noise, except as provided in subsections (2) and (3) below.

- (2) Noise from a motor vehicle located within the public right-of-way shall be measured at a distance of at least twenty-five (25) feet from the near side of the traffic lane being monitored and at a height of at least four (4) feet above the immediate surrounding surface.
- (3) Noise from a motor vehicle located other than within the public right -of-way shall be measured at a distance of at least twenty -five (25) feet from such motor vehicle and at a height of at least four (4) feet above the immediate surrounding surface.
- (4) Sound level measurements:
 - (a) Noise shall be measured on the A-weighted scale with a sound level meter of standard design and quality having characteristics established by the American National Standards Institute.
 - (b) In all sound level measurements, consideration shall be given to the effect of the ambient noise level created by the encompassing noise of the environment from all sources at the time and place of such sound level measurement.

PROHIBITED NOISE

Sec. 10-12-4. - Prohibitions—Generally.

The making and creating of an unreasonable noise within the Town as heard and measured in the manner prescribed in Section 10-12-3, 10-12-5 and 10-12-6 is hereby declared unlawful except when made under and in compliance with a permit issued pursuant to Sections 10-12-12, 10,12-13 or 10-12-14.

Section 10-12-5. Noise in excess of permissible levels.

Except as provided in Section 10-12-6, it shall be unlawful for any person to operate or permit to be operated a source of noise which creates a sound pressure level that exceeds the limits set forth in Table I in this Section for more than ninety (90) percent of any measurement period. The measurement period shall not be less than two (2) minutes and shall be measured at the approximate property boundary of the property affected by the noise. When a noise source can be identified and its noise is measured in more than one (1) zoning district, the applicable limits of each zoning district shall apply within such district. Noise levels for any overlay district shall conform with Table I and shall be determined according to the base zoning district.

**TABLE I
MAXIMUM PERMISSIBLE LEVELS**

Zoning District	6:00 a.m. – next 10:00 p.m. DB(A)	10:00 p.m. – next 6:00 a.m. DB(A)
Residential	95	80
Mixed-Use, Non-Residential and Others	110	95

Sec. 10-12-6. – Noise In Excess of Permissible Levels-Motor Vehicles.

- (1) Any person who operates, drives, or is in possession of a motor vehicle that is stopped, standing, parked or moving, and that makes, creates or permits a noise which creates a sound pressure level that exceeds the limits set forth in table II in this section is in violation of this chapter.

**TABLE II
MAXIMUM PERMISSIBLE LEVELS – MOTOR VEHICLES**

VEHICLE CLASS	MAXIMUM LEVAL DB(A)
Any vehicle with a manufacturer’s gross vehicle weight rating over ten thousand (10,000) pounds	88
Motorcycles	80
Other Motor Vehicles	80

Sec. 10-12-7. – Sound amplification systems.

It shall be unlawful to use or operate a sound amplification system in a fixed or movable position or mounted upon any motor vehicle upon any street, alley, sidewalk, park, public or private property within the Town without a permit issued pursuant to Section 10-12-12. Nothing in this Section shall prohibit the use of a sound amplification system within an enclosed area, as long as the noise created from such sound amplification system does not exceed the limitations set forth in Sections 10-12-5 and 10-12-6, as applicable.

Sec. 10-12-8. - Use of Engine Brakes Prohibited.

- (1) *Prohibited use of engine brakes.* The use of engine brakes shall be prohibited within the Town boundaries, including along U.S. Highway 160 within Town boundaries. Engine brakes may be used only in emergency or life/safety situations. Such situations include: pedestrians hastily entering crosswalks, cars hastily veering or stopping in front of trucks, oversized loads and other road conditions that may create hazardous driving conditions.
- (2) *Posted signage.* The Town shall erect and maintain all signage that identifies this section of the Municipal Code.

PERMISSIBLE NOISE

Sec. 10-12-9. - Construction Projects

Construction projects are exempt from the maximum permissible levels set forth in Sections 10-12-5 and 10-12-6. Construction projects shall be conducted between the hours of 6:00 a.m. and 10:00 p.m. Monday through Friday and 8:00 a.m. and 8:00 p.m. Saturday and Sunday. Any noise

generated by such activity outside of these hours shall be declared a nuisance, constitutes a violation of this Chapter, and is subject to fines set forth in Section 10-12-15 herein. This section shall not preclude emergency work of public service utilities. Furthermore, the Town Marshal or his or her designee is hereby authorized to issue a construction work noise permit allowing construction work noise to occur at a time other than the time set forth above based on circumstances that necessitate such construction work.

Sec. 10-12-10. - Emergencies.

Noise caused in the performance of emergency work for the immediate safety, health, or welfare of the community or individuals of the community or to restore property to a safe condition following a public calamity shall not be subject to the provisions of this Chapter. Nothing in this Section shall be construed to permit law enforcement, ambulance, fire or other emergency vehicles to make unreasonable noise in the performance of their duties when such noise is clearly unnecessary.

Sec. 10-12-11. - Quiet Zones.

The Town Administrator or his or her authorized representative has the authority to designate quiet zones within the Town. Such zones shall be in the vicinity of any school, hospital, institution of learning, court, rest home or other designated area where exceptional quiet is necessary, while the structures are in use; provided that conspicuous signs are placed or displayed in such streets or areas indicating that such areas have been designated as quiet zones. No person shall create any unreasonable noise within fifty (50) feet of such properties in a designated quiet zone.

PERMITS

Sec. 10-12-12.- Permit for Relief from Provisions.

Any person subject to the jurisdiction of this Chapter may make an application to the Town Marshal or his or her duly authorized representative for a permit for relief from the provisions of this Chapter on the basis of undue hardship. In administering such application, the Town Marshal or his or her duly authorized representative shall construe the term "undue hardship" to mean noise caused, which if prohibited, would cause undue hardship to the person responsible for the creation of the noise. In determining whether relief should be granted in the form of a permit pursuant to this Article, the Town Marshal shall consider the time of day that the noise is created, the duration of the noise, the loudness of the noise relative to the required limits, whether the noise is temporary or continuous in nature, the extensiveness of the noise and the technical and economic feasibility of bringing such noise source into conformance with the provisions of this Chapter.

Sec. 10-12-13. - Applications for Permits.

Any permit granted by the Town Marshal pursuant to this Chapter shall be effective only for the location and times designated within the permit and shall be further subject to such limitations

with regard to sound measurement limitations as may be set forth in such permit. Upon receipt of a permit application, the Town shall adhere to the following procedures:

- (1) The Town Marshal shall respond to a request for a permit within ten (10) business days of receiving the application.
- (2) The Town Marshal shall consider all the factors set forth in Section 10-12-12 and balance the interests of the applicant and those who are likely to be affected by the noise if a permit were granted. The Town Marshal shall prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood, so long as such restrictions do not unreasonably restrict the activities of the applicant. If the Town Marshal denies an applicant's request for a permit, in part or whole, the Town Marshal shall contemporaneously articulate in writing the reasons for any such denial.
- (3) Upon denial of a permit, the applicant may appeal the decision to the Town Administrator at an administrative hearing and present reasons why such permit should not be denied. The administrative hearing shall be held as soon after a request for appeal is received as possible, but not later than fifteen (15) days after a request for appeal is received. The Town Administrator shall issue a decision on an applicant's appeal within ten (10) days of the conclusion of the hearing. If the Town Administrator upholds the Town Marshal's denial of a permit, in part or in whole, the Town Administrator shall contemporaneously articulate in writing the reasons for any such decision.
- (4) If the Town Administrator upholds the denial of the variance permit, the applicant may file a cause of action with the Montezuma County District Court within twenty eight (28) days of such denial.

Sec. 10-12-14. - Public Events.

Applications for a permit to hold a public event that may violate the provisions of this Chapter shall be made to the Town Marshal or his or her duly authorized representative in accordance with the requirements of Section 10-12-13. Such permit, if issued, shall be valid only at the specified times and dates and only upon the specified conditions noted in such permit.

FINES AND REMEDIES

Sec. 10-12-15. - Injunction.

In addition to fines authorized by Section 1-4-20 and 1-4-30 of the Mancos Municipal Code, the operation or maintenance of any noise source in violation of any provisions of this Chapter that causes discomfort or annoyance to reasonable persons of normal sensitivity or that endangers the comfort, repose, health, or peace of residents within the Town shall be deemed and declared to be a public nuisance and may be subject to abatement by restraining order or injunction by a court of competent jurisdiction. It shall be presumed, subject to rebuttal, that a person seeking relief from noise disturbance is a reasonable person of normal sensitivity and the burden of proof to show otherwise shall be upon the person or entity against whom relief is sought.

Sec. 10-12-16. - Cost of Abatement.

A person found by a court of competent jurisdiction to have violated these provisions or allowed the violation to be caused or to continue shall be liable for, as restitution, the actual costs of abatement and collection, plus ten (10) percent of the abatement costs for inspection and other administrative costs. Such costs may be imposed by a court of competent jurisdiction or assessed and filed as a lien against any property on which the abatement was performed. If the costs of abatement have not been otherwise collected, the Town Administrator or person to whom he or she delegates administrative duties under this Chapter, shall prepare a statement enumerating the costs. The costs enumerated in this statement shall be a first and prior lien upon the property relating back to the date upon which the abatement was performed. A copy of this statement shall be deposited in the United States mail or personally hand delivered to the owner.

3. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid by final order of a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

4. Effective Date: This Ordinance shall take effect 30 days after publishing.

THIS ORDINANCE PASSED ON FIRST AND FINAL READING THIS ____ DAY OF _____, 2019.

TOWN OF MANCOS, COLORADO

Ellen "Queenie" Barz, Mayor

ATTEST:

Heather Alvarez, Town Clerk

PUBLISHED THE ____ DAY OF _____, 2019 BY THE AUTHORITY OF THE TOWN CLERK OF MANCOS, COLORADO.

ATTEST:

Heather Alvarez, Town Clerk