

COUNCIL BILL NO. 09-013
ORDINANCE NO. 4164

AN ORDINANCE AMENDING SECTION 38-62 OF ARTICLE II, NOISE CONTROL,
OF CHAPTER 38, ENVIRONMENT, PERTAINING TO MOTORCYCLE NOISE

WHEREAS, the City of Arvada is a political subdivision of the State of Colorado organized and existing as a home rule municipality pursuant to Section 6 of Article XX of the Colorado Constitution and the home rule charter of the City; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-15-401, the City possesses the authority to prevent and suppress noise and otherwise adopt regulations in furtherance of the public health, safety, and welfare; and

WHEREAS, the City Council finds that certain motorcycles that are not equipped with an exhaust muffler bearing a label required by the Environmental Protection Agency (“EPA”) create or emit noise that is unusually loud, excessive, and detrimental to the public health, safety, and welfare; and

WHEREAS, the Council therefore desires to amend Article II, Noise Control, of Chapter 38, Environment, of the Arvada City Code by the addition of a new subsection 38-62(12) to prohibit the operation within the City of any motorcycle not bearing a required EPA noise label, all in furtherance of the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. Subsection 38-62(12), Motorcycles, of section 38-62, Same-specific, of Division 2, Noises Regulated, of Article II, Noise Control, of Chapter 38, Environment, of the Arvada City Code is hereby added to read as follows:

- (12) *Motorcycles.* No person shall, nor shall the owner allow any person to operate a motorcycle manufactured after December 31, 1982, that is not equipped with an exhaust muffler bearing the federal Environmental Protection Agency required labeling applicable to the motorcycle’s model year, as set out in the Code of Federal Regulations, Title 40, Volume 24, Part 205, Subpart D and Subpart E, as may be from time to time amended. Said label shall be affixed to the exhaust muffler in such a manner as to be readily visible.
 - a. For purposes of enforcement of subsection (12), police officers may establish or determine reasonable suspicion to stop a motorcycle based on any relevant facts and circumstances concerning the unusually loud or excessive nature of the noise created or emitted by the motorcycle. This determination may be

based upon, but need not be limited to, a consideration of the following factors:

- (i) The time of day;
 - (ii) The proximity of the motorcycle creating or emitting the noise to any residential area, assisted living facility, nursing or care home, hospital, or public or private school;
 - (iii) Any unusual quality associated with the noise such as, but not limited to, a loud grating, grinding, rattling, or whining sound; or
 - (iv) Any other factors tending to show the magnitude or disruptive effect of the noise.
- b. Notwithstanding the language of subsection (12)a, a peace officer may enforce subsection (12) when an accident involving a motorcycle occurs, following any lawful traffic stop or contact, or during any traffic investigation.
- c. Testimony of the failure by any owner or operator of a motorcycle to immediately demonstrate the presence of an EPA noise label as required in subsection (12), when requested to do so by a peace officer, shall constitute prima facie evidence, at a trial concerning a violation charged under subsection (12), that the owner or operator of the motorcycle violated subsection (12).

Section 2. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3. This ordinance shall take effect five days after publication following passage.

INTRODUCED, READ, AND ORDERED PUBLISHED this 6th day of April, 2009.

PASSED, ADOPTED, AND APPROVED this 20th day of April, 2009.

Robert G. Frie, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Christopher K. Daly, City Attorney

Publication Dates: April 9, 2009
April 23, 2009