

ORDINANCE NO. _____

CITY OF WESTFIELD

IN CITY COUNCIL

DECEMBER 6, 2001

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF WESTFIELD, ADOPTED JUNE 17, 1993.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WESTFIELD AS FOLLOWS:

- A. That Chapter 10, Section 10-15 of the Code of Ordinances be and is hereby repealed, the section number to be reserved for future use.
- B. That Chapter 10, Section 10-16 of the Code of Ordinances be and is hereby repealed, the section number to be reserved for future use.
- C. That Chapter 10 of the Code of Ordinances be hereby amended by adding new sections to be numbered 10-30 through 10-36 as follows:

Sec. 10-30. Purpose.

This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the inhabitants of Westfield through the reduction, control, and prevention of such loud or raucous noise that unreasonably disturbs, injures, or endangers the comfort, privacy, repose, health, peace or safety of reasonable persons.

Sec. 10-31. Land use zones and sound levels.

- (a) Except as specifically provided for elsewhere in this Ordinance, no person shall cause, generate or permit sound, which exceeds the limits set forth below in section 10-31 (b), to extend beyond the property line.
- (b) The sound levels established below are before any adjustments are applied:

Zoning District	Time Of Day	Max. Sound Level (dBA)
All Residential	7 a.m. to 7 p.m.	55
	7 p.m. to 10 p.m.	50
	10 p.m. to 7 a.m.	45
All Commercial	7 a.m. to 7 p.m.	60
	7 p.m. to 10 p.m.	55
	10 p.m. to 7 a.m.	50

All Business	7 a.m. to 7 p.m.	65
	7 p.m. to 10 p.m.	65
	10 p.m. to 7 a.m.	60
All Industrial	7 a.m. to 7 p.m.	75
	7 p.m. to 10 p.m.	75
	10 p.m. to 7 a.m.	70
Airport	7 a.m. to 7 p.m.	80
	7 p.m. to 10 p.m.	80
	10 p.m. to 7 a.m.	75

(c) Adjustments to Maximum Sound Levels:

- (1) Agricultural uses shall conform to Industrial District standards.
- (2) The following uses are exempt from the second levels established in section 10-31(b) above, but may be subject to other sound limitations as set forth elsewhere in this ordinance:
 - a. school related activities on school property and any organized athletic events or activities occurring on state/municipal athletic fields, playgrounds, parks, or other state/municipal recreation facilities owned or operated by a the state/city, from 8 a.m. to 9 p.m.;
 - b. church related activities (including church bells) occurring on church property, from 8 a.m. to 9 p.m.;
 - c. special events for which city permits have been issued (the issuing authority may impose a maximum sound level (dBA) greater or lesser than in section (b). above;
 - d. operation of aircraft and railroads;
 - e. public safety or national defense activities conducted by authorized public safety or national defense personnel.
- (3) Commercial Recreational Property
 - a. Definitions.
 - Commercial Recreational Property. The term “commercial recreational property” means any non-residential privately owned non-church, non-school premises that is used primarily for the

purpose of open air recreational activities regardless of whether or not a fee is charged.

- Open Air Recreational Activities. The term "open air recreational activities" means activities conducted out-of-doors or under an open-sided structure for the enjoyment or entertainment of participants or spectators.
- b. Owners of commercial recreational property used for open air recreational activities may apply to the Chief of Police for a license to exceed the maximum permissible sound levels established at section 10-31(b).
 - c. The application for such license shall be in writing on such form as the Chief of Police requires. The application shall be filed at the Police Department between the hours of 8 a.m. and 4 p.m. Monday through Friday, legal holidays excepted, and shall be accompanied by a fee of Five Dollars (\$5.00). Each license shall be valid for the calendar year for which it is issued. Renewal licenses shall be processed in the same manner as initial applications for a license. Renewal applications for the upcoming calendar year may be submitted after November 30.
 - d. The Chief of Police may deny the application for a license in which case he shall set forth his reasons in writing to be mailed or otherwise delivered to the applicant within thirty days of the date of application. In the event that the Chief of Police grants the license, he shall include specific limitations on time, sound level and manner of sound reproduction as he deems appropriate. The Chief of Police shall not issue a license requiring a reduction of sound levels below levels that are otherwise allowed pursuant to section 10-31(b).
- (4) Nonconforming use: The maximum permissible sound level that may be emitted from any lot containing a nonconforming use, i.e. a grandfathered use under the zoning ordinance, shall be the same as that permitted for the most restrictive zone in which the use would be conforming.

Sec. 10-32. Common activities subject to alternate limitations.

- (a) Home Equipment and Powered Tools.
 - (1) Powered tools and equipment and any powered tools used in lawn and garden maintenance for home use, excepting such tools and equipment used as part of a home occupation (which must comply with the standards below), are exempt except as set forth, below.

- (2) When used inside a building/structure between the hours of 9:00 p.m. and 7:00 a.m., the sound levels generated by all such equipment shall not exceed the Maximum Sound Level for Residential Zones as set forth in section 10-31(b).
- (3) No person shall operate any such equipment or tools outside of a building/structure in any residential zoned area between the hours of 9 p.m. and 7 a.m.
- (4) Sound levels generated by tools and equipment as part of a home occupation shall not exceed 50 dBA, as measured at the lot line.

(b) Construction Activities and Equipment.

- (1) Commercial construction activities are subject to the alternate limitations at (b)(2), below, and are not subject to section 10-31(b) except as set forth herein. Such activities may only occur from 7:00 a.m. to 9:00 p.m. Monday through and including Saturdays, and on Sundays from Noon until 9:00 p.m. except as set forth below.
- (2) Maximum Sound Levels. No person shall operate any equipment or appurtenances thereto in commercial construction, nor undertake activities, to erect, construct, demolish, excavate for, alter or repair any building or structure, which exceeds 85 dBA, when measured at 50 feet (15.2 meters) from the source. This standard shall not apply to trucks, pile drivers, pavement breakers, scrapers, concrete saws and rock drills.
- (3) Night, weekend and legal holidays limitation. For purposes of this section, "legal holidays" means Christmas Day and Thanksgiving Day. Such activities are prohibited on legal holidays and outside of the days and times specified at section 10-32(b)(1) unless permitted in conformity herewith. A permit for out of hours commercial construction activities must be granted in advance by application to the Superintendent of Building and the Police Chief.

a. In granting such permit, the city shall consider whether:

- i. the construction noise in the vicinity of the proposed work site would be less objectionable at night than during the daytime because of different population densities or different neighboring activities;
- ii. obstruction and interference with traffic particularly on streets of major importance, would be less objectionable at night than during the daytime;
- iii. the type of work to be performed emits noises at such a low level as to not cause significant disturbances in the vicinity of the work site;

the character and nature of the neighborhood of the proposed work site;

iv. great economic hardship would occur if the work were spread over a longer time;

v. proposed night work is in the general public interest;

b. In granting such permits the city may prescribe such conditions, working times, types of construction equipment to be used, and permissible noise levels as it deems to be required in the public interest.

c. In no case may the noise level permitted exceed the Maximum Sound Levels for the Zoning District in which the work is occurring, except for reasons of emergency.

d. The equipment exempted in Section III.A. above are not exempted during these hours.

(4) For purposes of this section, construction activities on a public road within a zone shall be considered as taking place on private property within that zone.

(5) The adjustments to permissible sound levels established in section 10-31(c) apply to subsections (b)(2) and (b)(3) above.

(6) All equipment used in commercial activities shall have sound control devices no less effective than those provided on the original equipment, and no equipment shall have an unmuffled exhaust.

(7) All equipment used in commercial construction activities shall comply with all other pertinent standards of all state and federal agencies and regulations.

(8) The provisions of this section shall not apply to construction equipment used in connection with emergency work, provided the city is notified within 12 hours after commencement of work.

Sec. 10-33. Disturbing, Excessive, Offensive Noises Which Constitute General Public Nuisance Noise Prohibitions; Prima Facie Violations.

(a) The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous or unusual noise, commotion or vibration upon any street, park or other premises open to the public; or upon any municipally owned property, whether open to the public or not; shall be unlawful. The ordinary and usual sound, noise or vibration incidental to the operation of these places when conducted in accordance with the limitations placed upon sound levels specified at section 10-30(b), or as may otherwise be permitted elsewhere under the terms of this ordinance, are exempted from this prohibition.

- (b) The use or operation of a radio, television, stereo, boom box, amplified musical instrument or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors or passer-by is unlawful. Sound levels found to exceed the levels specified at section 10-31(b) when measured in accordance with section 10-33(e) shall be prima facie evidence of a violation of this section.
- (c) The use or operation of any of motorized dirt bike, motorcycle, all terrain vehicle or similar off road motorized device that produces sound in a manner that is plainly audible to any person other than the operator of the device, and those who are voluntarily participating in or witnessing the operation of the device, and which unreasonably disturbs the peace, quiet, and comfort of neighbors and passers-by is unlawful. Sound levels found to exceed the levels specified at section 10-31(b) when measured in accordance with section 10-33(e) shall be prima facie evidence of a violation of this section.
- (d) This provision shall not apply to any participant in a licensed parade, or to any person who has been otherwise duly authorized by the city to engage in such conduct.
- (e) Enforcement of prima facie violations.
 1. The characteristics and conditions which should be considered in determining whether a prima facie violation of the provisions of this section exists should include, but not be limited to the following:
 - a. the level of the noise;
 - b. whether the nature of the noise is usual or unusual;
 - c. whether the origin of the noise is natural or unnatural;
 - d. the level of the ambient noise;
 - e. the proximity of the noise to sleeping facilities;
 - f. the nature and zoning of the area from which the noise emanates and the area where it is received;
 - g. the time of day or night the noise occurs;
 - h. the duration of the noise; and
 - i. whether the noise is recurrent, intermittent, or constant.
 2. Any peace officer who is authorized to enforce the provisions of this section and who encounters evidence of a prima facie violation of this section is empowered to confiscate and impound as evidence, any or all of the components creating, amplifying or transmitting the sound.

Sec. 10-34. Temporary permits.

- (a) If an applicant can demonstrate that a diligent investigation of available noise abatement techniques indicates that immediate compliance with the requirements of this Article would be impractical or unreasonable, the City Council can issue a permit to allow an exclusion from the provisions contained in all or part of this Article with appropriate conditions to minimize the public detriment caused by such exclusions. Any such permit shall be of as short duration as possible (not to exceed one (1) year), but renewable once for up to one (1) additional one (1) year period upon showing of good cause, and shall be conditioned upon details and a schedule for compliance.

Sec. 10-35. Time for compliance.

Non-residential operations in existence prior to the date of adoption of this Ordinance shall be granted a three (3) month period within which to comply with provisions of this Ordinance. Any facility not in compliance by the end of such three (3) month period may apply for a temporary permit, as described in Section VIII to be excluded from the provisions of this Chapter. This Section shall apply only to non-residential facilities already in existence or for which work of improvement had commenced prior to the date this Ordinance went into effect.

Sec. 10-36. Administration/Enforcement.

- (a) The Chief of Police, or his or her authorized designees, shall administer and enforce the provisions of this Article, except where expressly provided otherwise. All other officers and employees of the City shall assist and cooperate in the administration and enforcement of this Article. Notwithstanding the foregoing, for purposes of enforcement, sound level readings must be taken by personnel authorized to enforce this Article.
- (b) First time violators will be warned and required to cease the violation. Subsequent violations of the provisions of this Article shall be punished by non-criminal disposition as provided in Chapter 1, section 1-9.1 and enjoined pursuant to Chapter 1 section 1-9.

D. That Chapter 1, Section 1-9.1 of the Code of Ordinances be and is hereby amended by deleting the reference to section 10-15 as contained therein and adding at section 109.1 the following:

10-31, 10-32, 10-33	Noise	\$25.00
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