

ORDINANCE NO. 1346

AN ORDINANCE OF THE TOWN OF RUSTON, WASHINGTON, RELATING TO NOISE CONTROL, DECLARING CERTAIN TYPES OF NOISE TO BE PUBLIC NUISANCES SUBJECT TO ABATEMENT, CITATION AND PENALTIES, AMENDING THE CRITERIA FOR NOISE DISTURBANCES SUBJECT TO ENFORCEMENT, IDENTIFYING CERTAIN TYPES OF NOISE OCCURRING AT NIGHT TO BE NIGHTLIFE DISTURBANCE NOISES SUBJECT TO ENFORCEMENT AND PENALTIES, ESTABLISHING ENFORCEMENT PROCEDURES AND SETTING PENALTIES FOR VIOLATIONS BY ADOPTING CHAPTER 7.80 RCW BY REFERENCE, REPEALING CHAPTER 9.03A OF THE RUSTON MUNICIPAL CODE; AMENDING SECTION 9.19.020, 9.19.060 AND 9.19.080 AND ADDING NEW SECTIONS 9.19.072, 9.19.074, 9.19.076 AND 9.19.078 TO THE RUSTON MUNICIPAL CODE.

WHEREAS, the Town Council finds that it is the policy of the Town to minimize the exposure of citizens to the physiological and psychological dangers of excessive noise and to protect, promote and preserve the public health, safety and welfare; and

WHEREAS, the Town Council finds that the noise standards and control measures adopted by the Department of Ecology under the authority of chapter 70.107 RCW are insufficient to address the types of noise described in this ordinance, and makes a finding that the standards adopted in this ordinance are necessitated by special conditions; and

WHEREAS, the Town Council finds that the existing noise code (chapter 9.19 RMC) lacks procedures relating to enforcement, that are needed for both the enforcement of the existing noise standards as well as the standards in this Ordinance; and

WHEREAS, the SEPA Responsible Official has issued a threshold determination for this Ordinance of Determination of Non-significance on October 26, 2011, which was not appealed; and (See, WAC 197-11-800(21))

WHEREAS, on October 14, 2011 the Town sent a copy of this Ordinance to the Washington Department of Ecology for approval; and

WHEREAS, on November 1, 2011 the Department of Ecology approved Ruston's draft revisions made by this Ordinance to the Town noise code; and

WHEREAS, on November 21, 2011, the Town Council held the first hearing on this Ordinance; and

WHEREAS, on December 5, 2011, the Town Council adopted this Ordinance during its regular meeting at second reading;

THE TOWN COUNCIL OF THE TOWN OF RUSTON HEREBY ORDAINS AS FOLLOWS:

Section 1. Chapter 9.03A of the Ruston Municipal Code is hereby repealed.

Section 2. Section 9.19.020 Of the Ruston Municipal Code is hereby amended to add the following definitions in alphabetical order:

"Amplified Noise" means noise that is increased by electronic means.

"Background Sound Level" means the level of all sounds in a given environment, independent of the specific source being measured.

"Property Boundary" means the surveyed line a ground surface, which separates the real property owned, rented, or leased by one or more persons, from that owned, rented, or leased by one or more other persons, and its vertical extension.

"Public Nuisance Noise" means any unreasonable sound which either annoys, injures, interferes with or endangers the comfort, repose, health or safety of an entire community or neighborhood, although the extent of damage may be unequal.

Section 3. Section 9.19.060 of the Ruston Municipal Code is hereby amended

to read as follows:

9.19.060 – Noise Disturbances.

(a) It is unlawful for any person knowingly to cause or make, or for any person in possession of property knowingly to allow or originate from the property, unreasonable noise which disturbs another, and to refuse or intentionally fail to cease the unreasonable noise when ordered to do so by a police officer. The content of the speech or sound shall not be considered in determining whether there is a violation of this section. "Unreasonable noise" shall include the following sounds or combinations of sounds:

~~All noise disturbances, defined in RMC 9.19.020 and not exempt under RCW 9.19.030, are prohibited at all times. The content of the sound will not be considered in determining a violation. The following acts are considered to be noise disturbances, if: (1) the noise is audible across a real boundary and unreasonably disturbs or interferes with the peace comfort and repose of the owners of real property or (2) the noise is audible at least 50 feet from the source:~~

(1) Loud and raucous, and frequent, repetitive, or continuous sounds made by any animal, except sounds made in animal shelters, commercial kennels, veterinary hospitals, pet shops or pet kennels with current permits issued by the Town;

~~(2)(4)~~ Loud and raucous, frequent, repetitive or continuous sounds created by the operation or playing of, any audio equipment, television set, musical instrument, sound amplification device, and similar devices, whether portable or stationary or mounted on or within a motor vehicle;

~~(3)(2)~~ Creating Loud and raucous, and frequent, repetitive or continuous sounds made by with the amplified or unamplified human voice between the hours of ten (10:00) p.m. and seven (7:00) a.m.

~~(4)(3)~~ Intentional sounding or permitting the sounding outdoors of any emergency warning device where an actual emergency does not exist; provided that sounds created during maintenance or testing of such emergency warning devices does not constitute a noise disturbance, and further providing that the maintenance and testing of such devices does not occur at unreasonable times;

~~(4) (5) Permitting any sounds to emanate from a construction site outside the hours that construction sounds are exempt from the provisions of this chapter or outside expanded hours as authorized herein. Operating sound amplification equipment not in compliance with a permit issued pursuant to the Ruston Municipal Code. Sounds created by construction and emanating from construction sites between the hours of 6:01 p.m. and 6:59 a.m. on all weekdays which are not legal holidays, and between the hours of 6:01 p.m. and 8:59 a.m. on Saturday, which are not legal holidays. Sounds emanating from construction sites on Sundays or legal holidays or outside of the exempt work hours are prohibited pursuant to this chapter unless expanded hours of operation are authorized by the town of Ruston according to RMC Section 9.19.030(c).~~

(6) The loud and raucous, frequent, repetitive or continuous sounds made by any horn or siren attached to a motor vehicle, except sounds that are made to warn of danger or that are specifically permitted or required by law;

(7) The ~~creation of~~ loud and raucous, frequent, repetitive or continuous sounds created in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine within a residential district.

~~(8) Yelling, shouting, hooting, whistling or singing on or near the public streets between the hours of 10:00 p.m. and 7:00 a.m. when such activity is not otherwise authorized.~~

~~(5)~~ The foregoing enumeration of acts shall not be considered as excluding other acts which may constitute noise disturbances.

Section 4. A new section 9.19.072 is hereby added to the Ruston Municipal

Code, which shall read as follows:

9.19.072 Nightlife Disturbances.

It is unlawful for any person in possession of real property located in any zoning district other than residential, to allow to originate from that property between the hours of ten (10:00) p.m. and seven (7:00) a.m., amplified noise that is plainly audible within a residential zone to a person of normal hearing from any location within the boundaries of the receiving residential property.

Section 5. A new section 9.19.074 is hereby added to the Ruston Municipal

Code, which shall read as follows:

9.19.074 Public Disturbance Noise.

A. While in park areas or residential zones, or any area where residences, schools, hospitals or human service facilities are in obvious proximity to the source of the sound, it is unlawful for any person to cause, make or allow to be made from audio equipment under such person's control or ownership the following:

1. Sounds from a motor vehicle audio system, including but not limited to, a radio, tape player, compact disc player or MP3 player, which is operated at such a volume that it would be clearly heard by a person of normal hearing at a distance of seventy-five (75) feet or more from the vehicle itself;

2. Sound from portable or stationary audio equipment, including but not limited to, a radio, tape player, compact disc player or MP3 player or amplifier(s), which is operated at such a volume that it could be clearly heard by a person of normal hearing at a distance of seventy-five (75) feet or more from the source of the sound.

B. This section shall not apply to persons operating portable or stationary audio equipment upon their own premises, such as an owner or tenant, in which event the provisions of 9.19.060 and 9.19.072 shall apply.

C. This section shall not apply to persons operating portable audio equipment within a public park pursuant to an event issued a permit under RMC Section 9.19.070.

Section 6. A new section 9.19.076 is hereby added to the Ruston Municipal

Code, to read as follows:

9.19.076 Enforcement. Enforcement of chapter 9.19 RMC. The Police Department has the authority to enforce this chapter under the procedure set forth in chapter 7.80 RCW.

A. Notice of Infraction. For any violation of this chapter, the police officer may issue and serve a notice of infraction under the procedures set forth in RCW 7.80.050. The notice of civil infraction shall include the elements set forth in RCW 7.80.070(2).

B. Notice of Infraction Final Unless Contested. A notice of civil infraction represents a determination that a civil infraction has been committed and is final unless contested as provided in chapter 7.80 RCW.

C. Response to Notice of Infraction. Any person who receives a notice of civil infraction shall respond to the notice as provided in RCW 7.80.080 within fifteen (15) days of the date of the notice. If the person who receives the notice of civil infraction wishes to contest the infraction, he or she shall complete the portion of the notice of civil infraction requesting a hearing and submitting it as provided in the notice and RCW 7.80.080. If the person who receives the notice of civil infraction wishes to explain mitigating circumstances surrounding the commission of the civil infraction, he or she shall complete the portion of the notice of civil infraction requesting a hearing and submitting it as provided in the notice and RCW 7.80.080.

D. If a hearing is requested, the municipal court's hearing on the notice of infraction shall be without a jury, under the procedures set forth in RCW 7.80.090 and 7.80.100.

E. If the court determines that the civil infraction was committed, an appropriate order shall be entered into the court records. If the court determines that the civil infraction was not committed, the case shall be dismissed. An appeal of the court's order shall be as provided in RCW 7.80.100(5).

F. If a hearing is held for the purpose of allowing a person to explain mitigating circumstances, the hearing shall follow the procedures in RCW 7.80.110. There is no appeal from the court's determination or order, as provided in RCW 7.80.110(3).

Section 7. A new Section 9.19.078 is hereby added to the Ruston Municipal

Code, which shall read as follows:

9.19.078 Abatement of Public Nuisance or Public Nuisance Noise.

A. The Town Council finds that a property at which three (3) or more violations of RMC Section 9.19.072 (Night Life Disturbances) have occurred in any twelve (12) month period constitutes a Public Nuisance and is subject to an action for abatement pursuant to RCW 7.48.220; provided that the owner of the premises has not changed in the 12 month period.

B. As a courtesy only, the Town Attorney may notify the owner (and/or tenant when the tenant or other person has been found to be in violation

of RMC Section 9.19.072) in writing that the property is subject to abatement as a Public Nuisance. Such notice(s) may include notification that an action for abatement may be commenced if three or more violations of Section 9.19.072 occur at the property within a twelve month period and that owner of the premises has not changed during this period.

C. The Town's abatement of the property under RCW 7.48.220 and other statutes shall be in addition to any other remedies provided by this chapter or any other law.

Section 8. Section 9.19.080 of the Ruston Municipal Code is hereby amended to

read as follows:

9.19.080 Violation; Penalties.

A violation of this chapter shall be considered a Class 1 civil infraction. A person found to have committed a civil infraction under this chapter shall be subject to a monetary penalty for a Class 1 civil infraction as set forth in RCW 7.80.120 or as amended hereafter. The court may assess additional costs and attorneys fees as set forth in RCW 7.80.140.

~~(a) Civil Violations and Penalties. A violation of the provisions of 9.19.050 is unlawful and constitutes a civil violation, punishable under 9.22 RMC as a class 2 infraction. Each day of continuing offense shall constitute a separate violation.~~

~~(b) Criminal Violations and Penalties. Five (5) separate offenses within a five year period of time by the same violator of the provisions of 9.19.050 shall constitute a misdemeanor, punishable by up to 90 days in jail and up to \$1,000.00 fine. A violation of the provisions of 9.19.060 shall constitute a misdemeanor, punishable by up to 90 days in jail and up to a \$1,000.00 fine.~~

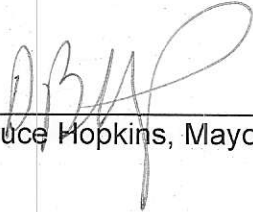
Section 9. Adoption of RCW by Reference. The Town hereby adopts chapter 7.80 RCW by reference, as if fully set forth herein. In accordance with RCW 35.21.180, not less than one copy of chapter 7.80 RCW has been filed for use and examination by the public, in the office of the Town Clerk, prior to the adoption hereof.

Section 10. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 11. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 12. Effective Date. This Ordinance shall be effective five days after publication as provided by law.

ADOPTED by the Town Council of the Town of Ruston, signed by the Mayor and attested by the Town Clerk in authentication of such passage on this 5th day of December, 2011.



Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:



Town Clerk

APPROVED AS TO FORM:

Carol Morris, Town Attorney